

No.

4575

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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HERMAN LANDFIELD and J. W. OLIVER,  
Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,  
Defendant in Error.

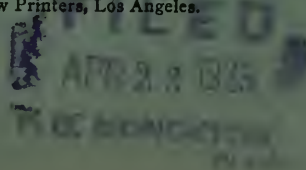
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Transcript of Record.

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Upon Writ of Error to the United States District  
Court, for the Southern District of Cal-  
ifornia, Northern Division.

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No.

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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Defendant in Error.

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Transcript of Record.

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Court, for the Southern District of Cal-  
ifornia, Northern Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italics* the two words between which the omission seems to occur.]

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**Names and Addresses of Attorneys.**

For Plaintiff in Error:

WARREN L. WILLIAMS and SEYMOUR S.  
SILVERTON, 419 Ferguson Bldg., Los An-  
geles, California.

For Defendant in Error:

S. W. McNABB, U. S. Attorney; EUGENE T.  
McGANN, Special Assistant U. S. Attorney,  
Federal Bldg., Los Angeles, California.

IN THE DISTRICT COURT OF THE UNITED  
STATES, IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA,  
SOUTHERN DIVISION.

-----

THE UNITED STATES	)	No. 6793-B	Crim.
OF AMERICA,	)		
-vs-	Plaintiff,	)	
		)	CITATION TO WRIT
HERMAN LANDFIELD,	)		
J. W. OLIVER and	)		ERROR.
JOHN DOE ELLIS,	)		
	Defendants.)		

UNITED STATES OF AMERICA, )  
SOUTHERN DISTRICT OF CALIFORNIA : SS  
SOUTHERN DIVISION )

TO THE UNITED STATES OF AMERICA,  
AND TO SAMUEL W. Mc NABB, UNITED  
STATES ATTORNEY FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA, GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty (30) days from the date hereof, pursuant to the Writ of Error filed in the Clerk's office of the District Court of the United States for the Southern District of California, Southern Division, wherein HERMAN LANDFIELD and J. W. OLIVER are plaintiffs in Error, and you are the Defendant in Error, to show cause, if any there be, why the Judgment in the said Writ of Error mentioned,



should not be corrected and speedy justice should not be done to the parties in that behalf.

GIVEN UNDER MY HAND at Los Angeles, California, in said District, this 7 day of March, 1925.

Bledsoe

Judge of the United States District Court  
in and for the Southern District of California,  
Southern Division.

[ENDORSED]: No. 6793-B Crim Dept.——  
IN THE DISTRICT COURT OF THE U. S. IN  
AND FOR THE SOUTHERN DISTRICT OF CAL-  
IFORNIA SOUTHERN DIVISION THE U. S.  
OF AMERICA Plaintiff vs. HERMAN LANDFIELD,  
et al Defendant CITATION TO WRIT OF ERROR.  
Received copy of the within citation this 9 day of  
March 1925 S. W. McNabb U. S. Attorney Eugene  
T. McGann Attorney for Plaintiff FILED MAR 9  
1925 CHAS. N. WILLIAMS, Clerk G. F. Gibson  
Deputy WARREN L. WILLIAMS SEYMOUR S.  
SILVERTON 419 FERGUSON BUILDING 307  
SO. HILL STREET LOS ANGELES, CAL.  
BDWY. 7881 Attorneys for Defendants Landfield and  
Oliver

IN THE DISTRICT COURT OF THE UNITED  
STATES, IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA,  
SOUTHERN DIVISION.

-----

THE UNITED STATES	)	
OF AMERICA,	)	No. 6793-B Crim.
-vs-	Plaintiff, )	
	)	
HERMAN LANDFIELD,	)	ACCEPTANCE OF
J. W. OLIVER and	)	SERVICE OF
JOHN. DOE ELLIS,	)	CITATION.
Defendants	)	

I hereby, this 9th day of March, 1925, accept due personal service of the foregoing citation, on behalf of the United States of America, defendant in error.

Eugene T McGann

Asst Attorney for United States

[ENDORSED]: No. 6793-B Dept. ——— IN  
THE DISTRICT COURT OF THE U. S. IN AND  
FOR THE SOUTHERN DISTRICT OF CALI-  
FORNIA SOUTHERN DIVISION The U. S. OF  
AMERICA Plaintiff vs. HERMAN LANDFIELD,  
et al Defendant ACCEPTANCE OF SERVICE OF  
CITATION FILED MAR 9 1925 CHAS. N. WIL-  
LIAMS, Clerk G. F. Gibson Deputy WARREN L.  
WILLIAMS SEYMOUR S. SILVERTON 419 FER-  
GUSON BUILDING 307 SO. HILL STREET  
LOS ANGELES, CAL. BDWY. 7881 Attorneys for  
Defendants Landfield and Oliver

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

	----- )	
	)	
THE UNITED STATES OF AMERICA,	)	No. 6793-B Criminal
-vs-	)	
	Plaintiff, )	
	)	
HERMAN LANDFIELD,	)	WRIT OF ERROR.
J. W. OLIVER, and JOHN	)	
DOE ELLIS,	)	
	Defendants. )	

)

UNITED STATES OF AMERICA: SS

)

THE PRESIDENT OF THE UNITED STATES OF AMERICA, TO THE HONORABLE JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, GREETING:

Because in the record and proceedings, and also in the rendition of the Judgment of a cause which is in said District Court before you, between HERMAN LANDFIELD and J. W. OLIVER, Plaintiffs in Error, and the United States of America, Defendant in Error, a manifest error has happened, to the great damage of said Herman Landfield and J. W. Oliver, Plaintiffs in Error, as by their Complaint appears: We being willing that error, if any hath happened,

should be duly corrected and full and speedy justice done to the parties aforesaid, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, and all things concerning the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, together with this Writ, so that you have the same at the City of San-Francisco, in the State of California, within thirty (30) days from the date hereof, in the said United States Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid, being inspected, the said Circuit Court of Appeals, may cause further to be done therein, to correct the errors, what of right and according to the laws and customs of the United States should be done.

WITNESS, the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, this 5th day of March, 1925.

(Seal)

CHAS. N. WILLIAMS

Clerk of the United States District Court,  
Southern District of California, South-  
ern Division.

R S Zimmerman

Deputy

Allowed by: Bledsoe

Judge

I hereby certify that a copy of the within Writ of Error was on the 6th day of March, 1925 lodged in

the office of the clerk of the said United States District Court, for the Southern District of California, Southern Division, for said defendants in error.

CHAS. N. WILLIAMS

(Seal) Clerk of the District Court of the United State for the Southern District of California

BY: G. F. Gibson

Deputy clerk.

[ENDORSED]: NO. 6793-B Crim. IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION. THE UNITED STATES OF AMERICA, Plaintiff, -vs- HERMAN LANDFIELD, J. W. OLIVER and JOHN DOE ELLIS, Defendants. WRIT OF ERROR FILED MAR 6 1925 CHAS. N. WILLIAMS, Clerk G. F. Gibson Deputy WARREN L. WILLIAMS S. S. SILVERTON 419 Ferguson Bldg. 307 So. Hill Street LOS ANGELES, CAL. Bdwy. 7881 Bdwy. 7880 Attorneys for Defendants, Landfield & Oliver

N B/W \$2000 S  
IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

THE UNITED STATES OF )  
AMERICA, )  
 ) Plaintiff, )  
 vs. ) INFORMATION )  
 ) )  
HERMAN LANDFEILD, ) National Prohibition )  
J. W. OLIVER and JOHN ) Act )  
DOE ELLIS ) )  
 ) Defendant. )  
 )

BE IT REMEMBERED, that Joseph C. Burke, United States Attorney for the Southern District of California, who prosecutes in behalf and with the authority of the United States, makes known to, and informs, the Court that heretofore, to-wit: on or about the 28th day of July, A. D. 1924, one HERMAN LANDFEILD, J. W. OLIVER and JOHN DOE ELLIS at Los Angeles, Los Angeles County, California, in the division and district aforesaid, and within the jurisdiction of this court, did knowingly, willfully and unlawfully sell for beverage purposes to one I. W. Cory about one (1) bottle of intoxicating liquor then and there containing alcohol in excess of one-half of one per cent by volume, at and for the agreed price of Five (\$5.00) Dollars lawful money of the United States; in violation of Section 3, Title

II, of the National Prohibition Act of October 28, 1919;

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

### SECOND COUNT

And now comes Joseph C. Burke, United States Attorney for the Southern District of California, who prosecutes in behalf and with the authority of the United States, and makes known to, and informs, the Court that heretofore, to-wit: on or about the 30th day of July, 1924, HERMAN LANDFELD, J. W. OLIVER and JOHN DOE ELLIS, at Los Angeles, Los Angeles County, California, in the division and district aforesaid, and within the jurisdiction of this court, did knowingly, willfully and unlawfully sell for beverage purposes to one C. W. Ahlin, about one (1) bottle of intoxicating liquor then and there containing alcohol in excess of one-half of one per cent by volume, at and for the agreed price of Seven (\$7.00) Dollars, lawful money of the United States; in violation of Section 3, Title II, of the National Prohibition Act of October 28, 1919.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

### THIRD COUNT.

And now comes Joseph C. Burke, United States Attorney for the Southern District of California, who prosecutes in behalf and with the authority of the

United States, and makes known to, and informs the Court that heretofore, to-wit: on or about the 7th day of August, 1924, HERMAN LANDFEILD, J. W. OLIVER and JOHN DOE ELLIS, at Los Angeles, Los Angeles County, California, in the division and district aforesaid, and within the jurisdiction of this court, did knowingly, willfully and unlawfully sell for beverage purposes to one Paul Hooke about one (1) pint of intoxicating liquor then and there containing alcohol in excess of one-half of one per cent by volume, at and for the agreed price of Seven (\$7.00) Dollars, lawful money of the United States; in violation of Section 3, Title II, of the National Prohibition Act of October 28, 1919;

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

#### FOURTH COUNT.

And now comes Joseph C. Burke, United States Attorney for the Southern District of California, who prosecutes in behalf and with the authority of the United States, and makes known to, and informs, the Court, that heretofore, to-wit: on or about the 29th day of August, A. D. 19—, one HERMAN LANDFEILD, J. W. OLIVER and JOHN DOE ELLIS at Los Angeles, Los Angeles County, California, in the division and district aforesaid, and within the jurisdiction of this court, did knowingly, willfully and unlawfully have in their possession about Three (3) quarts and one (1) pint of intoxicating liquor, then



and there containing alcohol in excess of one-half of one per cent by volume, for beverage purposes; in violation of Section 3, Title II, of the National Prohibition Act of October 28, 1919;

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

FIFTH COUNT.

And now comes Joseph C. Burke, United States Attorney for the Southern District of California, who prosecutes in behalf and with the authority of the United States, and makes known to, and informs, the Court that heretofore, to-wit: on or about the 29th day of August, A. D. 1924, one HERMAN :AMDFEO:D, J. W. OLIVER and JOHN DOE ELLIS at Los Angeles, Los Angeles County, California, in the division and district aforesaid, and within the jurisdiction of this Court, did knowingly, willfully, and unlawfully maintain a common nuisance, to-wit: a room, building and place at Glendale Tavern, 1120 S. San Fernando Boulevard, Los Angeles, County of Los Angeles where intoxicating liquor then and there containing alcohol in excess of one-half of one per cent by volume was manufactured, kept, sold and bartered for beverage purposes; in violation of Section 21, Title II, of the National Prohibition Act of October 28, 1919;

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

WHEREUPON, the said Attorney for the United States prays that due process of law may be awarded against the said defendant to make them answer the premises aforesaid.

JOSEPH C. BURKE,

United States Attorney.

Russell Graham

Assistant United States Attorney.

UNITED STATES OF AMERICA, )  
 ) SS.  
 Northern District of California. )

I, I. W. Cory, Federal Prohibition Agent, being first duly sworn on oath, says: that he has read the foregoing information and that the matters contained therein are true in substance and in fact.

I. W. Cory

SUBSCRIBED AND SWORN to before me this 30th day of Sept. 1924.

Walter B. Maling, Clerk U. S.  
 District Court,

(SEAL) Northern District of California.

By F. M. Lampert Deputy

[ENDORSED]: No. 6793 B Crim. In the DISTRICT COURT of the United States For the Southern District of California, Southern Division UNITED STATES OF AMERICA, Plaintiff, vs. HERMAN LANDFEILD, J. W. OLIVER JOHN DOE ELLIS Defendant INFORMATION Viol: Sec. 3, Title II, N. P. A. 11/17/24 Defendants Herman Landfeild and J. W. Oliver arraigned and enter separate pleas

of not guilty. Chas. N. Williams, Clerk U. S. District Court, Southern District of California By B. B. Hansen Deputy FILED OCT 17 1924 CHAS. N. WILLIAMS, Clerk By Louis J. Somers Deputy Clerk

At a stated term, to wit: The July Term, A. D. 1924 of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday the 17th day of November, in the year of Our Lord one thousand nine hundred and twenty-four.

Present:

The Honorable BENJAMIN F. BLEDSOE, District Judge.

UNITED STATES OF AMERICA,	} Plaintiff,
vs.	
Herman Landfeild, J. W. Oliver and	} No. 6793-B. Crim. . . . .
John Doe Ellis,	
Defendants.	} J

This cause coming before the court for arraignment and plea of defendants herein; Eugene T. McGann, Esq., Assistant United States Attorney, appearing as counsel for the Government; defendants Herman Landfeild and J. W. Oliver being present in court with their attorney S. S. Silverton, Esq., the Information is read in open court, and said defendants having stated their names to be as given therein, are required to enter their pleas and defendants Herman Landfeild and J. W. Oliver having thereupon entered their sep-

arate pleas of not guilty to each of the five counts of the Information, it is by the court ordered that this cause be continued to the December calendar for setting for trial of said two defendants.

At a stated term, to wit: The January Term, A. D. 1925 of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Tuesday the 24th day of February, in the year of Our Lord one thousand nine hundred and twenty-five.

Present:

The Honorable BENJAMIN F. BLEDSOE, District Judge.

UNITED STATES OF AMERICA,	}	No. 6793-B.
Plaintiff,		
vs.	}	Crim. . . . .
Herman Landfeild; J. W. Oliver and		
John Doe Ellis,		
Defendants.	}	

This cause coming on at the hour of ten o'clock A. M. for trial of defendants Herman Landfeild and J. W. Oliver before this court and a jury to be impanelled; Eugene T. McGann, Esq., Assistant United States Attorney, appearing as counsel for the Government; defendants Herman Landfeild and J. W. Oliver being present in court with their attorney Warren L. Williams, Esq., it is by the court ordered that a jury be impanelled herein, and thereupon the following twelve names are drawn from the jury box:

Dade D. Sayer; John E. Barber; Louis J. Harris; Chas. S. Gilbert; C. B. Blain; Geo. Guppy; Bernard Newman; Chas. W. Bell; James A. Bothwell; Geo. L. Proctor; Edward I. Moore and Chas. A. Henderson, and said petit jurors having been examined for cause by the court and by Warren L. Williams, Esq., counsel for the defendants, and passed for cause,

Said petit jurors Chas. W. Bell and Bernard Newman are peremptorily challenged by counsel for the defendants, and said petit jurors having been excused by the court,

It is by the court ordered that two more names be drawn from the jury box, and the names of Spencer L. Toll and Kenneth E. Preuss having been drawn, said petit jurors are examined by the court and by Warren L. Williams, Esq., for cause, and said petit jurors having been passed for cause,

Said Spencer L. Toll is peremptorily challenged by counsel for the defendants, and said Spencer L. Toll having been excused by the court,

It is by the court ordered that one more name be drawn, and the name of Franklin Otis Booth having been drawn, said Franklin Otis Booth is examined by the court for cause and said petit juror having been passed for cause, and counsel for the respective parties not having desired to peremptorily challenge the petit jurors now in the box, it is by the court ordered that said petit jurors be sworn in a body as the jury to try this cause, said petit jury, as sworn at the hour of 10:35 o'clock A. M. consisting of the following named persons, to wit:

## THE JURY:

Dade D. Sayer,	James A. Bothwell,
John E. Barber,	Geo. L. Proctor,
Louis J. Harris,	Edward I. Moore,
Chas. S. Gilbert,	Chas. A. Henderson,
C. B. Blain,	Kenneth E. Preuss,
Geo. Guppy,	Franklin Otis Booth,

I. H. Cory is called and sworn and testifies in behalf of the Government, and in connection with his testimony there are offered and admitted in evidence in behalf of the Government the following exhibits, to wit:

- Plaintiff's Ex. No. 1: White Rock bottle containing about one-third full of liquor (Gin)
- “ “ “ 2: Pint bottle partly full of liquor (whiskey)
- “ “ “ 3: Two bottles containing gin—one bottle containing a small amount of Scotch whiskey

and

Said witness I. H. Cory having been cross examined by Warren L. Williams, Esq., counsel for defendant Herman Landfeild and J. W. Oliver,

At the hour of 11:15 o'clock A. M. the court admonishes the jury that during the progress of this trial they are not to speak to anyone about this cause or any matter or thing therewith connected; that until said cause is finally submitted to them for their deliberation under the instruction of the court they are not to speak to each other about this cause or any

matter or thing therewith connected, or form or express any opinion concerning the merits of the trial until it is finally submitted to them and declares a recess for five minutes, and at the expiration of said five minutes the court having reconvened and all being present as before, and at the hour of 11:20 o'clock A. M. the court having ordered that the trial be proceeded with,

Minnie E. Cory is called and sworn and testifies in behalf of the Government, and said witness having been cross examined by Warren L. Williams, Esq.,

C. W. Ahlin is called and sworn and testifies in behalf of the Government, and said witness having been cross examined by Warren L. Williams, Esq.,

At the hour of twelve o'clock noon the court gives to the jury herein the aforementioned admonition, and declares a recess to the hour of two o'clock P. M. and at the hour of two o'clock P. M. the court having reconvened and all being present as before,

And at the hour of 2:15 o'clock P. M. the Government having rested,

Warren L. Williams, Esq., moves for an instructed verdict, and said motion having been denied by the court,

Herman Ellis Landfeild is called and sworn and testifies in his own behalf and is cross examined by Eugene T. McGann, Esq., and said witness having been examined by the court,

Attorney Warren L. Williams, Esq., moves to dismiss, and said motion having been denied,

At the hour of 2:35 o'clock P. M. the defendants rest; and

There having been no rebuttal for the Government, Attorney Warren L. Williams, Esq., asks for thirty minutes to argue for defendants, and said request having been denied, and the court having granted Attorney Warren L. Williams, Esq., fifteen minutes for argument,

Eugene T. McGann, Esq. argues to the jury in behalf of the plaintiff, and at the hour of 2:42 o'clock P. M. Warren Williams, Esq., having argued for the defendants, at the hour of 3:12 o'clock P. M. Eugene T. McGann, Esq., argues in reply, and the court having instructed the jury with respect to the law involved in this cause, and at the hour of 3:42 o'clock P. M. Warren L. Williams, Esq., having excepted to the instructions of the court to the jury, at the hour of 3:45 o'clock P. M. the jury retire in custody of Bailiff Felix Clavere to deliberate upon their verdict, and thereupon at the hour of 5:10 o'clock P. M. the jury return into court and are asked through their foreman if they have agreed upon a verdict, and the jury having replied that they have so agreed, it is by the court ordered that said verdict be presented and read by the clerk of the court, said verdict as presented and read by the clerk of the court being as follows, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION. United States of America, Plaintiff vs. Herman Landfield, J. W. Oliver and John Doe Ellis, Defendants. Ver-



dict No. 6793 B. Crim. We, the jury in the above entitled case, find the defendant, Herman Landfeild, guilty as charged in the 1st count of the Information, and guilty as charged in the 2nd count of the Information, and not guilty as charged in the 3rd count of the Information, and guilty as charged in the 4th count of the Information, and guilty as charged in the 5th count of the Information; and the defendant J. W. Oliver, not guilty as charged in the 1st count of the Information, and not guilty as charged in the 2nd count of the Information, and not guilty as charged in the 3rd count of the Information, and guilty as charged in the 4th count of the Information, and guilty as charged in the 5th count of the Information. Los Angeles, California, February 24, 1925. James A. Bothwell, Foreman  
and

The verdict having been presented and read by the clerk of the court as aforesaid as to said defendants Herman Landfeild and J. W. Oliver, and filed herein, it is by the court ordered that defendants be remanded into the custody of the United States Marshal and that this cause be continued to the hour of ten o'clock A. M. February 25th, 1925, for sentence of said defendants.

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE SOUTHERN DISTRICT  
OF CALIFORNIA SOUTHERN  
DIVISION.

-----

United States of America,	)	
	Plaintiff,	) VERDICT.
Vs.	)	
	)	No. 6793-B-Crim.
Herman Landfeild, J. W. Oliver	)	
and John Doe Ellis,	)	
	Defendants.	)
	)	

-----

We, the Jury in the above entitled case, find the defendant, Herman Landfeild,

Guilty as charged in the 1st count of the Information, and

Guilty as charged in the 2nd count of the Information, and

Not Guilty as charged in the 3rd count of the Information, and

Guilty as charged in the 4th count of the Information, and

Guilty as charged in the 5th count of the Information; and the defendant, J. W. Oliver,

Not Guilty as charged in the 1st count of the Information, and

Not Guilty as charged in the 2nd count of the Information, and

Not Guilty as charged in the 3rd count of the Information, and

Guilty as charged in the 4th count of the Information, and

Guilty as charged in the 5th count of the Information.

Los Angeles, California, February 24, 1925.

James A. Bothwell,  
FOREMAN.

[ENDORSED]: FILED FEB 23 1925 Chas. N. Williams, Clerk Edmund L. Smith Deputy

At a stated term, to wit: The January Term, A. D. 1925 of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Wednesday the 25th day of February, in the year of Our Lord one thousand nine hundred and twenty-five.

Present:

The Honorable BENJAMIN F. BLEDSOE, District Judge.

UNITED STATES OF AMERICA,	}	No. 6793-B.
Plaintiff,		
vs.		
Herman Landfeild; J. W. Oliver and	}	
John Doe Ellis,		

This cause coming before the court for sentence of defendant Herman Landfeild and J. W. Oliver, at the hour of 10:25 o'clock A. M.; Eugene T. McGann, Esq., Assistant United States Attorney, appearing as counsel for the Government; defendants Herman Landfeild and J. W. Oliver being present in court in the

custody of the United States Marshal with their attorney Warren L. Williams, Esq.,

Warren L. Williams, Esq., argues and presents a motion for new trial, and said motion for a new trial having been denied, and an exception having been noted for the defendants,

The court pronounces sentence upon defendants for the offence of which they stand convicted, namely, violation of the National Prohibition Act of October 28th, 1919, and it is the judgment of the court that defendant Herman Landfeild be imprisoned in the Orange County Jail, County of Orange, California, for the term and period of six months upon each of the first and second counts, said terms of imprisonment to begin and run concurrently, and that he be imprisoned in the said Orange County Jail for the term and period of one year upon the fifth count of the Information, to begin and run concurrently with the terms of imprisonment imposed on the first and second counts, and to pay unto the United States of America a fine in the sum of \$1000.00 and stand committed to the said Orange County Jail until said fine shall have been paid, and to pay a fine of one dollar on the fourth count; and it is the judgment of the court that defendant J. W. Oliver pay unto the United States of America a fine of one dollar on the fourth count of the Information and stand committed to the Orange County Jail, County of Orange, California, for the term and period of six months on the fifth count, and

Both defendants having been remanded into the custody of the United States Marshal and having been granted ten days' stay of execution of sentence,

It is ordered by the court that said defendants be allowed an additional ten days in addition to the time allowed by law to file bill of exceptions, and that the United States Marshal be authorized to take defendants, in custody, to attend to certain of their business matters, at the Marshal's convenience, and in his discretion.

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

THE UNITED STATES OF AMERICA, ) No. 6793-B Criminal )
-vs- Plaintiff, ) REQUEST FOR )
HERMAN LANDFIELD, ) INSTRUCTIONS )
J. W. OLIVER and JOHN ) UPON BEHALF )
DOE ELLIS, ) OF DEFENDANTS, )
Defendants. ) LANDFIELD AND )
) OLIVER.

The defendants, HERMAN LANDFIELD and J. W. OLIVER, in the above entitled matter hereby requests the Court to instruct the Jury by giving to the Jury each and every one of the instructions attached hereto and marked Numbers 1 to \_\_\_\_\_, inclusive.

DATED: \_\_\_\_\_, 1925.

\_\_\_\_\_  
 Attorney for Defendants, Landfield and Oliver.  
 Refused

Bledsoe

J

\_\_\_\_\_  
 You are instructed that the terms "defendant" and "defendants" are used interchangeably in these instructions, and that unless one defendant is specifically referred to by name or description herein, when the term 'defendant' is used in these instructions, the defendants who appear here are *referred* to.

DEFENDANTS' INSTRUCTION #1

GIVEN:

\_\_\_\_\_  
 The law presumes each defendants to be of good character, and it is your duty to do likewise, and you must not draw any presumption against these defendants that you would not against any other persons of good character charged with a like offense.

DEFENDANTS' INSTRUCTION NO. 2

GIVEN:

\_\_\_\_\_  
 Judge.

The fact that the defendants, Landfield or Oliver, were friendly, or even intimately friendly with the defendant, Ellis, is not a circumstance in itself to be considered against them, neither is it sufficient to

show that these defendants were involved with the said Ellis in the commission of said offense, if any was committed, but the prosecution must connect the defendants, Landfield and Oliver in some way with the commission of the alleged offense and no presumption is to be indulged in against them because the evidence may point to the guilt of the co-defendant, Ellis.

DEFENDANTS' INSTRUCTION NO. 3  
GIVEN:

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Judge.

The defendant in this case is presumed by law to be innocent of any crime until guilt of such crime and every essential element thereof is established beyond a reasonable doubt.

It is incumbent upon the prosecution to prove every material element of the offense charged beyond a reasonable doubt, and if you have such reasonable doubt as to whether they have proved or have failed to prove any one essential and material fact going to make up guilt, it is your sworn duty to acquit.

It is by law considered better that any number of guilty persons should escape than to adopt a course under which an innocent person might be convicted because of an erroneous conclusion of court or jury.

Hence it is that a defendant cannot be convicted unless his guilt is established by more than a preponderance of evidence. It is not enough that you should believe in his guilt to such an extent that would make you willing to act in the ordinary affairs of life, even

of the greatest importance. This will not do. Before you can find this defendant guilty, you must be satisfied of his guilt to a moral certainty and beyond a reasonable doubt.

DEFENDANTS' INSTRUCTION NO. 4  
GIVEN:

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Judge.

You are the sole and exclusive judges of the facts in this case, and of the credibility of the witnesses. Your power of judging, however, is not arbitrary, but must be exercised with legal discretion, and in subordination to the rules of legal evidence. You are not bound to believe the testimony of any witness unless such testimony imports verity, and establishes conviction in your minds, nor are you bound to decide in conformity with the declaration of any number of witnesses which do not produce conviction in your minds as against a lesser number, or against other evidence satisfying your minds. Every witness is presumed to speak the truth. This presumption may be repelled by the manner in which he or she testifies, by his or her interest in the case, if any is shown by the evidence, his or her partiality or impartiality, by the reasonableness or unreasonableness of any statements he or she makes, by his or her candor and fairness or lack thereof, and by any other fact or circumstance elicited during the trial which may aid you in determining as to whether the witness has spoken the truth.



DEFENDANTS' INSTRUCTION NO. 5  
GIVEN:

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JUDGE

The Jury is advised to acquit the defendants.

DEFENDANT'S INSTRUCTION NO. 6  
GIVEN:

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JUDGE

You are instructed that testimony with regard to verbal statements should be received with great caution. This evidence, consisting, as it does, in the mere repetition of oral statements, is subject to much imperfection and mistake in consequence of the person speaking not having clearly expressed his or her meaning, or, in consequence of the witness having misunderstood him or her, as the case might be. It frequently happens also that the witness, by unintentionally altering a few of the expressions really used, gives an effect to the statement completely at variance with what the person in fact did say. You are instructed that this kind of testimony should be scanned closely, and that it is to be received with caution.

DEFENDANT'S INSTRUCTION NO. 7  
GIWEN:

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Judge.

The Court charges you that if any witness has wilfully sworn falsely as to any material matter, it is

your duty to distrust the entire evidence of such witness.

DEFENDANT'S INSTRUCTION NO. 8  
GIVEN:

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Judge.

It is not your duty to look for some theory upon which to convict the defendant, but, on the contrary, it is your duty, and the law requires you, if you can reasonably do so, to reconcile any and all circumstances that have been shown with the innocence of the defendant, and so acquit.

DEFENDANT'S INSTRUCTION NO. 9  
GIVEN:

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Judge.

You are instructed that although you might find from the evidence the crime was in fact committed as charged in the information, yet, if any of you have a reasonable doubt as to whether or not these defendants committed or aided in the commission of such crime, then you must find the defendant not guilty.

DEFENDANT'S INSTRUCTION NO. 10  
GIVEN:

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You are instructed that you have a right to consider the fact that innocent men have been convicted, and

to consider the danger of convicting an innocent man, in weighing the evidence to determine whether there is a reasonable doubt as to the defendant's guilt.

DEFENDANT'S INSTRUCTION NO. 11  
GIVEN:

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Judge.

You are instructed that mere probabilities are not sufficient to warrant a conviction in this case, nor is it sufficient that the great weight or preponderance of evidence supports the allegations of the Information; nor is it sufficient that upon the doctrine of chance it is more probable that this defendant is guilty than that he is innocent; but to warrant a conviction of the defendant in this case he must be proven guilty clearly and conclusively, and beyond a reasonable doubt. If it fails to establish beyond a reasonable doubt the guilt of the defendant in the manner and form as charged in the Information then it is the duty of the jury to acquit the defendant.

DEFENDANT'S INSTRUCTION NO. 12  
GIVEN:

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Judge.

In considering the weight and effect to be given to the evidence of the defendant, you may consider his manner and the probability of his statements taken in connection with all the evidence in the case; and in judging of the defendant who has testified before

you, you are in duty bound to presume that he has spoken the truth, and unless that presumption has been legally rebutted, his evidence is entitled to full credit. If his testimony standing alone or taken in connection with other facts and circumstances in the case, raises a reasonable doubt in your minds as to his guilt, it will be your duty to act upon that doubt and acquit him.

DEFENDANT'S INSTRUCTION NO. 13  
GIVEN:

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Judge.

You must not suffer yourself to be prejudiced against the defendant because of the fact that he is charged with this offense, and you must not suffer yourself to be led to convict the defendant for fear that a crime may go unavenged, or for the purpose of deterring others from the commission of like offenses. No such argument or reason can be weighty enough to justify you in laying aside or ignoring that just and most humane rule of the law which says that you must acquit the defendant unless every fact necessary to establish his guilt has been proven to you beyond a reasonable doubt.

DEFENDANT'S INSTRUCTION NO. 14  
GIVEN:

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JUDGE.

For one person to abet another person in the commission of a criminal offense, means for him to know-

ingly and with criminal intent, aid, promote, encourage or instigate, by act or counsel, or both by act and counsel, the commission of such criminal offense.

DEFENDANT'S INSTRUCTION NO. 15  
GIVEN:

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Judge.

Every person on trial for a crime, until his guilt is established beyond a reasonable doubt, is presumed to be of good character in the absence of evidence impeaching the same; and, in this case he is presumed to be of good character for the traits involved, namely, for truth, honesty, integrity and as a law abiding citizen until such presumption is overcome by credible evidence in the case.

DEFENDANT'S INSTRUCTION NO. 16  
GIVEN:

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Judge

You are instructed that any of the statements, communications, acts or conduct of the witnesses in this action, between themselves or with other persons, cannot be considered by you as evidence tending to connect the defendants with the commission of the alleged offense; unless you find that such acts, communications, statements, or conduct were made or transpired in the presence of the defendant and were assented to by him, or were participated in by the defendant.

DEFENDANT'S INSTRUCTION NO. 17  
GIVEN:

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Judge

Each defendant herein is charged under one Count of this Information with knowingly, wilfully and unlawfully maintaining a building and place where intoxicating liquors, for beverage purposes, were kept, sold, and bartered in violation of law, and you are instructed that it is incumbent upon the government to prove that the liquors were so kept by the defendants in said building, charged in the information, for the purposes charged therein, and it is not sufficient for the government to show that certain intoxicants were found in the said building in the possession of others, but they must go further and show that the defendants had said intoxicants, if any, in their possession or control, or that they were there with the knowledge of defendants or either of them.

DEFENDANTS INSTRUCTION #18  
GIVEN:

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Judge.

You are instructed that in this case the law raises no presumption against the defendant, and the fact that he is charged with the crime alleged and that an Information has been filed against him is no evidence of his guilt and should raise no presumption of such act in the minds of the Jury, but every presumption of law is in favor of his innocence and in order

to convict him of the crime charged in the Information every material fact necessary to constitute such crime must be proved beyond reasonable doubt.

DEFENDANT'S INSTRUCTION NO. 19  
GIVEN:

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Judge

You are instructed that before you can convict the defendants in this case it must appear from the evidence beyond a reasonable doubt that the defendant and not somebody else, committed the crime charged in the information, if such offense was in fact committed. It is not sufficient that the evidence shows that the defendants or somebody else committed the crime, nor that the probabilities are that the defendant and not somebody else committed the crime, unless those probabilities are so strong as to remove all reasonable doubt as to whether the defendants or somebody else is the guilty party.

DEFENDANT'S INSTRUCTION NO. 20  
GIVEN:

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Judge.

[ENDORSED]: No. 6793-B Criminal U. S. DISTRICT COURT Southern District of California Southern Division United States of America vs. Herman Landfield, et al. FILED FEB 23 1925 Chas. N. Williams, Clerk Edmund L. Smith Deputy

IN THE DISTRICT COURT OF THE UNITED  
STATES, IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA,  
SOUTHERN DIVISION.

THE UNITED STATES OF )  
AMERICA,

Plaintiff, )

vs. )

MOTION FOR NEW  
TRIAL.

HERMAN LANDFIELD, )

J. W. OLIVER and JOHN

DOE ELLIS, )

Defendants. )

AND NOW COME Herman Landfield and J. W. Oliver, defendants in the above entitled cause, by Warren L. Williams and Seymour S. Silverton, their attorneys, and move the Court to set aside the verdict rendered herein and to grant a new trial and for reasons therefor show to the court the following:

(1) The verdict is contrary to the law of the case.

(2) The verdict is not supported by any evidence in the case.

(3) The Court upon the trial of the case, above entitled admitted incompetent evidence offered by the United States, prejudicial to the rights of said defendants, moving herein.

(4) The court upon the trial of the above entitled case, excluded evidence competent to the case, offered by these moving defendants, to the prejudice of these defendants.



(5) The Court improperly instructed the jury to the prejudice of these defendants.

(6) The court improperly refused, to defendants, prejudice, to give correct instructions tendered by these defendants.

(7) The Court erred in refusing to direct a verdict of not guilty at the close of plaintiff's evidence.

(8) The Court erred in refusing to direct a verdict of not guilty at the close of all the evidence.

(9) The Court erred in its comments to the jury on the weight and character of the testimony.

DATED FEBRUARY 25th, 1925.

Warren L. Williams and  
Seymour S. Silvertown

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Attorneys for defendants, Landfield  
and Oliver.

[Endorsed]: ORIGINAL No. 6793-B Dept.——  
IN THE DISTRICT COURT OF THE UNITED  
STATES, IN AND FOR THE SOUTHERN DIS-  
TRICT OF CALIFORNIA, SOUTHERN DIVI-  
SION. THE UNITED STATES OF AMERICA,  
Plaintiff vs. HERMAN LANDFIELD, J. W.  
OLIVER, and JOHN DOE ELLIS Defendants.  
MOTION FOR NEW TRIAL Received copy of the  
within Motion for a New Trial this 25 day of Feb.  
1925 Russell Graham Asst. U. S. Atty. Attorney for  
Piff. FILED FEB 25 1925 Chas. N. Williams,  
Clerk Edmund L. Smith Deputy WARREN L.  
WILLIAMS SEYMOUR S. SILVERTON 419 Fer-  
guson Building 307 So. Hill Street LOS ANGELES,  
CAL. Bdwy. 7881 Attorneys for Moving Defendants.

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

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THE UNITED STATES OF AMERICA,	)	No. 6793-B Criminal
	)	BILL OF EXCEP-
-vs-	Plaintiff,	) TIONS ON BEHALF
		) OF HERMAN
HERMAN LANDFIELD, J.	)	LANDFIELD and
W. OLIVER and JOHN DOE)	)	J. W. OLIVER,
ELLIS,	)	DEFENDANTS
Defendants.	)	HEREIN.

BE IT REMEMBERED, That heretofore, towit: on the 17th day of October 1924, an Information was filed in the above entitled Court against the defendants, HERMAN LANDFIELD and J. W. OLIVER, charging them, in five counts, with the violation of the National Prohibition Act of October 28, 1919, and thereafter, on or about the 17th day of November, 1924, the said Herman Landfield and J. W. Oliver appeared in said Court and were duly arraigned upon the said Information, and each entered his plea of "Not Guilty" to each and every count contained in said Information against said defendants, Landfield and Oliver; that thereafter, upon the 24th day of February, 1925, the said cause came on duly and regularly for trial, the plaintiff herein, The United States of America, being represented by E. T. McGann, Assistant United States

(Testimony of I. H. Cory.)

District Attorney for the Southern District of California, and the defendants herein, Herman Landfield and J. W. Oliver, being represented by Warren L. Williams and Seymour S. Silverton, Esqs. Thereupon the jury to try the cause was duly and regularly impaneled and the following proceedings took place on and during the trial.

The United States of America, to maintain the issues on its part, called as a witness, I. H. Cory, who being duly sworn, testified as follows:

(Reporter's Transcript—Pages 1 to 17).

TESTIMONY OF I. H. CORY, FOR THE GOVERNMENT.

My name is I. H. Cory, and I am a Federal Prohibition Agent, and was so employed on or about the 28th day of July 1924. At about that date I was at the Glendale Tavern, at Los Angeles County, and I saw the defendant, Landfield, at that time. I had business with the defendant, Landfield, at 11 o'clock P.M., that is, between 10 and 11. I went to the Glendale Tavern to make investigation there. I arrived there with Mrs. Cory and Agent Paul Hooke around a little after 10 in the evening.

The place is situated on San Fernando Boulevard, and faces the Boulevard, but the entrance is at the rear. We drove into the back and parked our automobile there and came up to the rear door and were met by a man by the name of Ellis. Ellis is a man of about 6 or 7 feet, slight build and blond, and he ap-

(Testimony of I. H. Cory.)

peared to be a kind of a greeter at the door. I had also seen Ellis prior to that time at a place on West Adams Street.

We checked our hats and coats there, and were seated at a table, and the waiter came up and asked what we wanted.

A. (Reporter's Transcript, Page 4, Line 8 to Page 4, Line 26).

(Witness continuing) "I told the waiter that we wanted to see the proprietor and he went away and very shortly Mr. Landfield came over. We had a table for four and I asked Mr. Landfield to take a seat, that I wanted to talk to him. He sat down in the empty chair and I took a card from my pocket, which had been given to me by a man by the name of George Cook, whom I afterwards arrested at this place.

THE COURT: What was that? I didn't catch that.

(Answer read)

MR. WILLIAMS: I move that the words "whom I afterwards arrested at this place" be stricken out as immaterial.

THE COURT: That may be stricken out.

A (Continuing) This card was an o.k. card, so called, and I handed it to Mr. Landfield—

MR. WILLIAMS: We object to any testimony concerning the card, on the ground that it is not the best evidence.

THE COURT: Overruled.

MR. WILLIAMS: Exception."

(Testimony of I. H. Cory.)

(Witness continuing) Mr. Landfield took the card and I told him that my name was Collins, and I said to him, "Here is a card from Mr. Cook, who works at Jimmie Christy's place on West Adams Street, and and if that is not satisfactory to you, ring up the place on West Adams Street, the phone number is on the card, and satisfy yourself that we are all right." Mr. Landfield asked me what I wanted and stated that he guessed I was all right. Before that we also had some conversation in which he told me he was Kid Herman who used to fight in South San Francisco, and I told him I didn't know much about the prize fighting game, but we were down there to have a good time, and he said he guessed we were all right, and asked me what I wanted, and I said, "Well, give us some gin fizzes." He said, "I don't serve any mixed-up drinks or straight drinks at the table, but I will get you the makings." So he went away across the dance floor, and went into a small room on the left hand side of the dance hall, on what I would call the north side of the building, and was gone a couple of minutes. Then he came back and beckoned me from the middle of the dance hall. I then got up and walked over to him, and he took me into this room which had no furniture in it at all, if my recollection is correct, except a certain kind of a kitchen table, one of those pine board tables, with possibly a chair, and he introduced me to Mr. Ellis. Mr. Ellis said, "Oh, that is the man that wanted the gin," and he gave me a White Rock bottle crowned with a crown cork so that it looked just the same as

(Testimony of I. H. Cory.)

a White Rock bottle, and Mr. Ellis said, "Here is the gin, this is the way we serve it," and I gave Mr. Ellis \$5.00 for the bottle and put it in my pocket and went back to the table and joined my party. Landfield did not actually take the *mone*, but he was there. We then went back to the table and the *witer* came up to the table and brought a little silver bowl of powdered sugar, a pint bottle, I think it was a White Rock bottle, full of lemon juice, glasses, ice, and another bottle of White Rock, also a bottle of gingerale, which I had ordered for Agent Hooke, who didn't drink at all. I took the bottle of gin, which was in the White Rock bottle, out of my pocket and placed it on the table, and the waiter opened it and put some sugar and lemon juice and some of this gin into the glasses. During that visit we had two of these gin fizzes, I think, and I made some excuse and got out. The balance of the liquor I took with me to my hotel, took off the crown cork and put in a regular cork, and sent it to the Chemist for the Internal Revenue Department at San Francisco for analysis.

(Reporter's Transcript—Page 7, Line 25, to Page 9, Line 13)

"Mr. McGANN: Q Where did you first see that bottle, Mr. Cory?

A I first saw that bottle when Mr. Ellis handed it to me in the small room in the Glendale Tavern in the prsence of Mr. Landfield. I paid him \$5.00 for it.

Q What date was that?

(Testimony of I. H. Cory.)

A It is marked here (indicating) "Date of buy 7/28/24." The 28th day of July. "Paid, \$5.50."

Q Did you examine the contents of that bottle at the time?

A I drank two drinks out of it; yes, sir.

Q What was it?

A Gin.

MR. WILLIAMS: I object to that as calling for a conclusion of the witness, and no proper foundation laid for the question.

THE COURT: Do you know gin when you taste it?

A Yes, sir.

Q Have you had enough experience to know what it is if you taste it?

Yes, sir.

THE COURT: Overruled.

MR. WILLIAMS: Exception.

MR. MCGANN: I will ask that this be admitted in evidence.

MR. WILLIAMS: I object to it on the ground that there is no proper foundation laid for its introduction.

THE COURT: In what way is there no proper foundation laid?

MR. WILLIAMS: No foundation laid in this: That the witness had not been properly qualified to testify as to what the contents of this bottle is.

THE COURT: It is a matter of common knowledge what gin contains. Did it contain more than one-half of one per cent of alcohol by volume?

(Testimony of I. H. Cory.)

A It did.

MR. WILLIAMS: I object to that on the ground that the witness is not qualified to testify to that.

THE COURT: Overruled.

MR. WILLIAMS: Exception.

THE COURT: All right. Go on."

(Witness continuing) The next time I went to the Glendale Tavern was on the 30th day of July, 1924; Agent C. W. Ahlin and my wife went with me.

(Reporter's Transcript—Page 10, Line 6, to Page 10, Line 11)

"A (Continuing) I sent for the proprietor through the waiter—

MR. WILLIAMS: I move that that be stricken out as immaterial and calling for a conclusion of the witness.

THE COURT: Denied.

MR. WILLIAMS: Exception."

(Witness continuing) Mr. Landfield again came to the table. I said to him, "Herman, this is Mr. Carlson from San Francisco. He is in the lumber business with the Hammond Lumber Company, and is down here to have a good time. He says he knows all of the prize fighters and everybody else. Cook knows him, and Jimmie Christy knows him, and everything is all right."

(Reporter's Transcript—Page 11, Line 4, to Page 13, Line 4)



(Testimony of I. H. Cory.)

“A (Continuing) Mr. Landfield again went back into the room where he had delivered me the gin, rather, where the gin was sold to me—

MR. WILLIAMS: I move that “where the gin was sold to me” be stricken out as immaterial.

THE COURT: Denied.

MR. WILLIAMS: Exception.

A (Continuing) He came out from the room and called Agent Ahlin over there, and Agent Ahlin went with him and came back to the table very shortly afterwards with a flask containing Scotch Whisky—

MR. WILLIAMS: Just a moment. Do I understand that Agent Ahlin came back, or Mr. Landfield?

A Agent Ahlin came back. We consumed a couple of—

MR. MCGANN: Q I will ask you to examine this bottle, Mr. Cory.

A Yes, sir.

Q Where did you first see that bottle?

A I saw that bottle first when it came onto the table—rather, when Agent Ahlin took it out of his pocket in the Glendale Tavern.

Q Did you examine the contents at that time?

A I had a drink out of it, possibly two.

Q What would you say the contents of the bottle was?

MR. WILLIAMS: I object to that as immaterial, calling for a conclusion of the witness, and no proper foundation laid.

THE COURT: Overruled.

(Testimony of I. H. Cory.)

MR. WILLIAMS: Exception.

A I would say that it is Scotch Whisky.

THE COURT: Do you know Scotch Whisky when you taste it?

A Yes, sir.

MR. WILLIAMS: We object to his statement that he knows Scotch Whisky when he tastes it, and I renew my objection that the proper foundation has not been laid.

THE COURT: Some people, I suppose, know it. This witness says he does. Overruled.

MR. WILLIAMS: Exception.

MR. Mc GANN: I ask at this time to introduce in evidence Government's Exhibit No. 2.

MR. WILLIAMS: The same objection. No proper foundation laid.

THE COURT: Overruled. In what respect is the foundation insufficient?

MR. WILLIAMS: It has not been shown what the bottle contains. It might be gingerale, from the color of it, for all we know.

THE COURT: I know, but color is not the only thing that goes into the consideration of what it is. If he said he looked at the color and said it was Scotch Whisky, that would be different, but he didn't do that. He said he tasted it. Overruled.

MR. WILLIAMS: Exception."

(Witness continuing) We stayed there a short time, and as soon as possible, got out of the place, and this bottle was taken back by Agent Ahlin and labeled by

(Testimony of I. H. Cory.)

himself, and it was also sent to the United States Chemist in San Francisco.

The third time I went there was, I believe, on the 28th day of August. I went there with a raiding crew.

(Reporter's Transcript—Page 13, Line 14, to Page 18, Line 10).

MR. Mc GANN: Q Who was present at the time of the raid?

A Agent Glynn, Agent Plunkett, Whittier, Hooke and Agent Cass from San Diego, and Agent Tyson, of the Los Angeles office. We went there on a search warrant which I had procured on affidavit before United States Commissioner Long, alleging these sales.

MR. WILLIAMS: I move it be stricken out as immaterial and not the best evidence.

THE COURT: Denied. It is harmless.

MR. WILLIAMS: Exception.

MR. Mc GANN: Q Then what did you do?

A We entered the place, and immediately the place was in an uproar.

MR. WILLIAMS: I move that be stricken out as a conclusion.

THE COURT: Denied. Harmless.

MR. WILLIAMS: Exception.

A (Continuing) And bottles were thrown to the floor and broken, bottles and glasses were thrown around, and one agent was assaulted, Agent Cass, I believe.

(Testimony of I. H. Cory.)

MR. WILLIAMS: I move that all of that be stricken out as calling for a conclusion of the witness.

THE COURT: Denied.

MR. WILLIAMS: Exception.

A (Continuing) During it all we succeeded in getting from the tables, or thereabouts, three bottles, two bottles of gin and one bottle containing Scotch Whisky, about half full. I arrested Mr. Landfield and Mr. Oliver, and this George Cook, who had given me the o.k. card from the first place, and who at that time was acting as a waiter for Mr. Landfield.

MR. WILLIAMS: I move that that answer be stricken out as immaterial and no foundation laid.

THE COURT: Denied.

MR. WILLIAMS: Exception.

A (Continuing) At that time I took Mr. Landfield and sat him down in a chair, and he got up and started to run around, and I sat him down again and told him I didn't want him to get up again or I would put the handcuffs on him, and that he had better be a little quiet. He said, "Well, I am not responsible for this stuff in my place." He said, "The guests brought it in and how am I going to keep them out?" I said, "Mr. Landfield, that is your business. If you have liquor that is in the quantity that is in this place, and let your guests bring it in, and you don't stop them, you are responsible, and the Federal Government are going to keep your place clean."

MR. WILLIAMS: We object to all of that and move that it be stricken out as immaterial.

(Testimony of I. H. Cory.)

THE COURT: Denied.

MR. WILLIAMS: Exception.

MR. Mc GANN: Q I will ask you to examine these three bottles.

A These three bottles were found in the premises at the time of the raid on the 28th day of August, it says here (indicating).

MR. WILLIAMS: I move that "it shows here" be stricken out as hearsay.

THE COURT: Denied.

MR. WILLIAMS: Exception.

A It is on the label here (indicating)

MR. Mc GANN: Q Now, did you examine the contents of the three bottles at that time?

A Yes, sir: I did.

Q What sort of an examination did you make, Mr. Cory?

A I sat at the table there making the return on the search warrant, and as the agents found the liquor they brought it over to me and I smelled it and tasted it to make sure what it was, and then I gave Mr. Landfield a return on the search warrant for them.

Q What did you find the contents of these bottles to be?

A These two bottles, so called "gin". This other bottle is Scotch Whisky.

MR. WILLIAMS: I move that that answer be stricken out on the ground there is no proper foundation laid, and calling for a conclusion of the witness.

(Testimony of I. H. Cory.)

THE COURT: Overruled.

MR. WILLIAMS: Exception.

MR. Mc GANN: I ask at this time, if the Court please, that the three bottles, the two bottles of gin and the one bottle of Scotch Whisky, be accepted in evidence as Government's Exhibit No. 3.

MR. WILLIAMS: I object to their introduction as immaterial, and no proper foundation laid.

THE COURT: Are you still bothered with the color, or is it something else?

MR. WILLIAMS: The color looks quite natural. It looks like water.

THE COURT: In what respect is the foundation insufficient?

MR. WILLIAMS: This witness is not qualified.

THE COURT: You still know gin and whisky, do you?

A Yes, sir.

Q When you taste them?

A Yes, sir.

Q And you tasted those bottles?

A Yes, sir.

Q And it was gin and whisky?

A Yes, sir.

MR. WILLIAMS: I object to that and move that the answer be stricken out as immaterial, and object to the introduction of the testimony, on the same ground.

THE COURT: Denied.

MR. WILLIAMS: Exception.

(Testimony of I. H. Cory.)

MR. Mc GANN: Q You testified that the waiter brought you some lemon juice.

MR. WILLIAMS: Has the Government introduced these three bottles?

MR. Mc GANN: Yes.

MR. WILLIAMS: Has your Honor ruled upon their introduction?

THE COURT: Yes.

MR. WILLIAMS: I desire an exception to that ruling."

(Witness continuing) I do not know who the waiter was who brought the lemon juice and the cracked ice; I looked for him the night I made the raid and couldn't find him, a large man, I should judge five foot eleven. He is not a party to this case.

#### CROSS EXAMINATION

I have no memorandum to fix the time that I went to the Glendale Tavern. I do so from memory. I haven't any note. I have notes as to what occurred there, but they are in my grip. I refreshed my recollection from these notes in order to qualify to testify here today.

I went there under the name of Collins, which is not my name, and disguised myself by taking off my glasses and wearing a mustache. I have not seen Mr. Landfield before. I presented him with some kind of a card, and told him I was a regular fellow and wanted a drink. He was actually present when the liquor was delivered to me. He sat at the table when he told me he would give me the makings. I know what

(Testimony of I. H. Cory.)

liquors taste like for I have been a Federal Prohibition Agent for three years, during which time I have perhaps made a thousand purchases since prohibition went into effect. Before that I used to take a drink. I tasted the contents of this bottle by my wife and I drinking two gin fizzes. I drank what is missing from each bottle. I was not present when the test was made as to alcoholic content. I have not examined the contents of the bottle since it was returned from the Chemist. When the bottle was given to me in the presence of Mr. Landfield, it had an ordinary cork of a White Rock bottle, the same little cap that you take and open up like a gingerale bottle.

Mr. Ellis said to Mr. Landfield, "Yes, I know this is the gentleman that wanted the gin," and he gave me the bottle. It said "White Rock" on it, and so far as I know, it was an ordinary White Rock bottle. I know that it did not contain White Rock Mineral Water because he charged me \$5.00 for it; it looks just the same as White Rock Mineral Water.

The bottle designated "Scotch Whisky" I did not get. Agent Ahlin got that; I do not know whether he got it from Mr. Ellis or not. I do not know where he got it. He was in the other room. The three bottles, Government's Exhibit 2, were not taken from the defendant, but they were taken from the table at that time.

We raided the place on the 28th of August, and as the agents rushed through the place, the liquor



(Testimony of I. H. Cory.)

was thrown from the tables on the floor, and bottles and glasses were broken by the guests.

Landfield was running around wild there, and I had to take him and sit him down twice. I heard about a young man there being beaten up; he assaulted Agent Cass, which resulted in his being struck. During the confusion, Mr. Landfield was running around. I sat Mr. Landfield down and I told him to sit down or I would have to put the hand cuffs on him. I told him if he did not sit down that I would knock him down. Everybody in the place seemed to have liquor on the tables or under the tables. I did not see any liquor on any of the tables; I just judged from general conditions.

I arrested a man by the name of Cook, and the Oliver and Landfield. I asked Mr. Landfield where Ellis was. He said he was not working there any more. I did not say that I had nothing on Mr. Landfield, and that if he would turn Ellis up, I would let him go.

On the 28th day of July, 1924, we went to the place and I handed a card of introduction from Mr. Cook to Mr. Landfield and I told him I was in the insurance business, and that George Cook would tell him that we were o. k. He told me that he was Kid Herman, the prize fighter, and told us if we were out for a good time, we ought to go to Catalina. He said he had three tickets for the flying boat which he would sell at half price. I almost bought the tickets

(Testimony of I. H. Cory.)

from him. Then we told him we wanted some gin fizzes, and he said he did not serve any straight drinks at the table, so he said he would get us the makings; and he went into this room across the dance hall. This is the room that I subsequently found out had one table and a chair in it. He later beckoned me over and he introduced me to Ellis. At that time Ellis was sitting in the little room. Ellis is five foot six or seven, not so very tall, dark complexion, black eyes, weighing, I should judge, about 175 or 180 pounds; at that time he wore a tuxedo. He had a dinner coat with a white shirt on, and a black tie in a bow.

I took the liquor back to the table and the waiter opened it and brought another bottle of real White Rock and a bottle of gingerale. I do not know where Mr. Ellis got this White Rock bottle. He had it with him, but he did not have it in his pocket, and I do not know where he got it.

I do not recall stating to Mr. Landfield that I wanted to see Mr. Ellis. I had seen Ellis before the 28th of August once, but I had never seen Mr. Landfield before. These three bottles I had never seen in the possession of the defendant Landfield. I took them from guests in the place.

(Reporter's Transcript—Pages 30, Line 15, to Page 48, Line 4).

(Testimony of Minnie E. Cory.)

TESTIMONY OF MRS. MINNIE E. CORY, FOR  
THE GOVERNMENT.

Mrs. Minnie E. Cory, called as a witness on behalf of the government, testified as follows:

I was at the Glendale Tavern on the 28th day of July, 1924 with Mr. Cory and Mr. Hooke. I saw the defendant, Herman Landfield at that time, but not the defendant, J. W. Oliver. I had no dealings with Mr. Landfield personally, but I witnessed the dealings. It was about 10 or 10:30 at night that we were there. A card was presented to Mr. Landfield, and Mr. Cory and Mr. Hooke asked if they could get some liquor. Mr. Landfield said that he couldn't serve them any drinks at the table. Mr. Landfield said that it was customary to get a bottle and serve lemon juice and White Rock water in bottles, and that we could mix our drinks at the table; that he would see that we got a bottle of gin.

Mr. Landfield left the table and very soon he came back and motioned to come out. When Mr. Cory returned he had the gin, and the lemon juice and White Rock Water and sugar was served at the table.

(Reporter's Transcript—Page 32, Line 18, to  
Page 33, Line 23.)

“Q I will ask you to examine this bottle and state whether you have ever seen it before?”

A The bottle that the gin was served in was a bottle just like this, with a White Rock label on it.

(Testimony of Minnie E. Cory.)

MR. WILLIAMS: I move that the word "gin" be stricken out as calling for a conclusion of the witness, and no proper foundation laid.

THE COURT: Denied.

MR. WILLIAMS: Exception.

MR. Mc GANN: Q. Did you examine the contents of the bottle?

A Why, I sampled it, if that is what you want to know.

Q You tasted some of it, did you?

A Yes, sir.

Q How much?

A We made up a drink of gin fizz.

Q Do you know gin when you taste it?

A I think so.

Q Do you?

A Yes, sir.

Q Would you say it was gin that you drank at that time?

A I would say so; yes, sir.

Q It was taken from this bottle?

MR. WILLIAMS: I move that all of the witness's testimony as to the contents of the bottle be stricken out as calling for a conclusion of the witness, and no proper foundation laid, your Honor.

THE COURT: Denied.

MR. WILLIAMS: Exception."

(Witness Continuing) Mr. Landfield sat at the table quite a few minutes talking. I was there again

(Testimony of Minnie E. Cory.)

two nights later with Mr. Cory and Mr. Ahlin. I saw Mr. Landfield again. He came to the table and spoke, but he did not sit at the table this time. He stood there talking. Mr. Ahlin asked if he could get some liquor, and Mr. Landfield said he could accommodate him with some whisky, and when Mr. Ahlin came back he had the whisky.

(Reporter's Transcript—Page 34, Line 22, to Page 35, Line 20).

“Q I will ask you ever have seen this bottle before?

A It was served in a flask, a pint flask similar to that, and I presume that is the same bottle.

MR. WILLIAMS: I didn't hear that.

A I say, it was served in a pint flask and I presume that is the same bottle.

MR. WILLIAMS: I object to what the witness presumes as incompetent, irrelevant and immaterial, and no foundation laid.

THE COURT: Q Did it look like that bottle?

A Yes, sir; it was a plain bottle just like that.

MR. Mc GANN: Q Did you drink any of the contents out of that bottle at that time?

A I took just one drink.

Q You know that it was whisky?

A Yes, sir; it was whisky.

Q Were you there on any other occasion?

A No, sir.

Q Did you at any time see Mr. Oliver on your visits?

(Testimony of Minnie E. Cory.)

A I did not.

Q Did you know Mr. Landfield when you saw him?

A Yes, sir.

Q Is he in the court room now?

A He is sitting directly in back of his attorney.

MR. Mc GANN: Take the witness."

CROSS EXAMINATION.

Mrs. Cory testified on cross examination as follows:

I recognized Mr. Landfield here the first time I saw him. I have not refreshed my recollection particularly from any notes or from any conversation since the 28th day of July, 1924. My husband and I have only discussed my testifying here today as to whether I could remember the facts in the case. My husband, Mr. Cory, did not read me a statement of the case he had written up, and we have discussed the case here today approximately once.

From where we were seated on the 28th day of July, we could get a clear view of the dance hall. When we went in we had a card of introduction and we asked for Mr. Landfield. I am not a prohibition officer, and was not one on the 28th day of July, 1924. I just went with my husband. I expect they asked for Mr. Landfield, and they enquired as to where Mr. Landfield was from a waiter. I could not see if this man was the defendant, Oliver, or not.

I have seen Mr. Ellis, and I saw him before the 28th day of July, 1924. He is a man probably five foot ten, slender, light complected or light hair.

(Testimony of Minnie E. Cory.)

Mr. Cory asked Mr. Landfield if he knew where he could get anything to drink. Mr. Landfield said he could not serve any drinks, but that he could serve the makings. When my husband came back, he had a White Rock bottle, and later the waiter brought powdered sugar, cracked ice and things like that. Later on in the evening, Mr. Landfield stopped at our table and asked if everything was all right. He did not say anything about liquor.

We went there on the 30th, about 11 o'clock in the evening. Mr. Landfield came to our table and talked to us. Mr. Ahlin asked him if he could get us a bottle of whisky. Mr. Landfield said yes, and he motioned to Mr. Ahlin, and Mr. Ahlin went into another room, and when he came back, he had the whisky. It was a pint flask in a plain bottle. It was a similar bottle to the one the District Attorney handed me. I do not say it was the same bottle. I had some drinks out of it. It was Scotch whisky. I know the difference between Bourbon and Scotch whisky. There was no discussion between the parties there as to whether it was Scotch Whisky. Mr. Landfield did not say it was Scotch Whisky. The waiter did not say it was Scotch Whisky. I took one drink straight. Mr. Ahlin, I think, took the bottle away. I know that Mr. Landfield motioned for Mr. Ahlin to come out in the other room, and when he came back he had a bottle of Scotch Whisky. I do not recall whether Mr. Ahlin brought anything else or not. That was the only bottle I saw.

(Reporter's Transcript—Page 48, Line 7, to  
Page 59, Line 10.)

(Testimony of C. W. Ahlin.)

TESTIMONY OF C. W. AHLIN, FOR THE  
GOVERNMENT.

Mr. C. W. Ahlin, called as a witness on behalf of the government, testified as follows:

I am a Federal Prohibition Agent, and was so employed on the 30th day of July, 1924. I was at the Glendale Tavern, Los Angeles County, on said date, and I saw the defendants, Landfield and Oliver at that time. The defendant, Oliver, served us soft drinks at the table. All the conversation was with defendant Landfield; there was present at that time, Agent Cory, Mrs. Cory, Agent Hooke and myself. It was between 10:30 and 11 o'clock at night.

Mr. Cory introduced me to Mr. Landfield, telling me that he was the proprietor of the place. Mr. Cory introduced me as a friend of his from San Francisco, and told Mr. Landfield that I was all right, to give it to me. Then Mr. Ellis came to the table, and I was introduced to him.

(Reporter's Transcript—Page 50, Line 15, to  
Page 53, Line 19.)

“A Mr. Landfield was present, and a short time after that Mr. Ellis beckoned to me to come over to the little room off of the dance floor there and delivered me a pint bottle of Scotch Whisky, for which I gave him \$5.00.

Q I will ask you if you have ever seen this bottle before (handing bottle to witness)?

A I have.



(Testimony of C. W. Ahlin.)

Q Where?

A It was bought out there at the Glendale Tavern from Mr. Ellis.

Q Is that the bottle you bought from Mr. Ellis?

A It is.

Q Where was the defendant Landfield when you bought that?

A In the premises some place.

Q Was he in your immediate presence when you purchased this from Mr. Ellis?

A I was in the room by myself with Mr. Ellis.

MR. WILLIAMS: I move that all of that testimony be stricken out on behalf of the defendants Landfield and Oliver.

THE COURT: Denied.

MR. Mc GANN: Q Did you examine the contents of that bottle at that time?

A We did.

Q What did you ascertain the contents of that Bottle to be?

A Scotch Whisky.

MR. WILLIAMS: W object to that as immaterial and no foundation laid.

THE COURT: Do you know Scotch Whisky when you taste it?

A Yes, sir.

Q Did you taste this?

A Yes, sir.

(Testimony of C. W. Ahlin.)

Q Was that Scotch Whisky?

A Yes, sir.

Q It was?

A Yes, sir.

MR. WILLIAMS: I move that that be stricken out as calling for the conclusion of the witness and no foundation laid.

THE COURT: Denied.

MR. WILLIAMS: Exception.

MR. Mc GANN: Q Were you at that address at any other time?

A I was out there at a later date.

Q What date?

A Around in October sometime.

Q What was the occasion of your visit?

MR. WILLIAMS: We object to any October visit on the ground that it is immaterial, and not within the time charged in this information.

THE COURT: Denied.

MR. WILLIAMS: The last date mentioned was October.

THE COURT: They are charged with maintaining a nuisance on or about the 29th day of August, and any time either before or after that, within a reasonable degree, would be relevant.

MR. WILLIAMS: We renew our objection to the October visit on the ground that it is too far removed, too remote, and incompetent.

THE COURT: Overruled.

(Testimony of C. W. Ahlin.)

MR. WILLIAMS: Exception.

MR. Mc GANN: Q What was the purpose of your visit?

A With Agent Bybee we visited these premises again and we then purchased liquor. This liquor was purchased by me of Oliver in the presence of Mickey Murphy, who was the main proprietor of the place at that time.

MR. WILLIAMS: I move that that all be stricken out as immaterial to the issues contained in this indictment.

THE COURT: Denied.

MR. WILLIAMS: Exception.

MR. Mc GANN:

Q What date was that, if you know?

A I don't just recall the date; I haven't got my records with me.

Q Now, where you there at any other time other than the two times you have mentioned?

A No, sir.

Q I take it you were not present at the time of the raid?

A I was not.

MR. Mc GANN: Take the witness."

#### CROSS EXAMINATION.

The rear of the house is really the front. As you go in, you enter a large reception room. You enter what you might call a dining room. There was quite a crowd of people seated on the sun porch on the

(Testimony of C. W. Ahlin.)

30th of July. I had seen Mr. Ellis before that date. After being introduced by Agent Cory to Mr. Landfield. He pointed to Mr. Ellis and brought him over there and introduced me to Mr. Ellis.

Mr. Cory told Mr. Landfield I was a lumberman from San Francisco, then Mr. Landfield called Mr. Ellis over. Mr. Landfield was present at the conversation between Mr. Ellis and myself. I told Mr. Landfield I wanted Scotch, and Landfield said yes, give it to me. Mr. Oliver brought some gingerale and Canada Dry Ale, but no sugar or cracked ice. I made a label on the bottle taken by me from the place.

The notation on that bottle there of July 30th, is in my hand writing. I know Scotch Whisky by the taste and I differentiated between Scotch Whisky and Bourbon by the taste of it. The alcoholic content is more than one half of one per cent. I know so from the effect and the feeling of it. Agent Cory and Mrs. Cory had two drinks a piece. Mr. Hooke does not drink.

And thereupon the defendants and each of them, by their counsel, moved the Court to direct the Jury to return a verdict of "Not Guilty" on each of said counts against each of said defendants upon the ground that no offense had been proven against either of these defendants, which said Motion was denied by the Court, to which ruling of the Court, said defendants then and there duly excepted.

(Reporter's Transcript—Page 60, Line 3, to  
Page 61, Line 15).

(Testimony of C. W. Ahlin.)

“THE COURT: All right, gentlemen, proceed, please.

MR. Mc GANN: The Government rests.

THE COURT: All right. Proceed.

MR. WILLIAMS: At this time, in compliance with the practice of this Court, I desire at this time to move, on behalf of the defendant, J. W. Oliver, as to Count 1 of this information, that the Jury be instructed to acquit the defendant, J. W. Oliver, on the ground—

THE COURT: The motion will be denied, and it may be considered as having been made on behalf of each of the defendants as to each count of the indictment, and denied.

MR. WILLIAMS: I would like to make my motion, if the Court please.

THE COURT: I said it might be considered as made to all defendants on all counts, and denied.

MR. WILLIAMS: I desire to move also as to Count 2—

THE COURT: I said it might be considered as having been made with respect to each defendant and as to each count, and denied.

MR. WILLIAMS: That includes counts 3, count 4 and count 5?

THE COURT: Yes, and denied. Proceed.

MR. WILLIAMS: Now, on behalf of the defendant, Herman Landfield, I desire to move this Court that the Jury be instructed—

(Testimony of Herman E. Landfield.)

THE COURT: It has been suggested, Mr. Williams, that—

MR. WILLIAMS: Wait a minute, if the Court please; I haven't made my motion.

THE COURT: I said it might be considered as to each defendant and each count, and the motion denied.

MR. WILLIAMS: I should like the Court to know there are five counts.

THE COURT: I know there are five counts, and it may be considered as made to five counts by each defendant, and denied.

MR. WILLIAMS: For the purpose of the record—

THE COURT: So now that ought to be understood, proceed.

MR. WILLIAMS: Very well. Mr. Landfield, take the stand, please."

Whereupon the defendants introduced the following testimony:

(Reporter's Transcript—Page 61, Line 17, to Page 75, Line 1).

TESTIMONY OF HERMAN E. LANDFIELD,  
FOR THE DEFENDANTS:

Herman Landfield, called as a witness on behalf of the defendants, testified as follows:

I am one of the defendants in the above entitled action, and I am now connected with the Simpson Automobile Parking Plant. My business on the 28th day of July, 1924, was Manager of the Glendale Tavern. I remember Mr. Cory and the little lady, but

(Testimony of Herman E. Landfield.)

I do not remember Mr. Ahlin. I remember Mr. Hooke; I saw them on the 28th day of July in the Glendale Tavern. At that time I had been charge of said Tavern for two days. When they came in, Mr. Hooke said, this is Mr. Collins and Lady, and I seated them as I would any guest.

They were seated on the sun porch, about 25 or 30 feet from the entrance. They asked for a drink, and I told them that my predecessor was fired for having liquor in the place, and that I was going to run that place as good as I possibly could, and I would not stand for any liquor being around there. That I had given my waiters strict orders not to sell any liquor; that I would not have any liquor around there. He said he wanted a little bit, and he said, "I would like to see that little fellow over there." Then I went over and asked the gentleman to their table. The gentleman was a guest there the same as Mr. Cory. The conversation between them was had in my absence. They ordered some gingerale and some White Rock water which the waiter brought over. I do not remember whether Mr. Oliver was the waiter or not, I honestly don't know, I don't remember.

A few days later I saw Mr. Cory and the little lady and Mr. Hooke. They tried to get liquor in the house, and I told them it was impossible for them to get any liquor from me or anybody connected with the place. Then they chatted with this gentleman over there. Mr. Ellis was the man. He was there that night. He is just a young chap, and would bring

(Testimony of Herman E. Landfield.)

in a lady friend to dance and eat. I was there for business, and I didn't know what he was there for.

This place is a high class restaurant, and it has five dining rooms, a five piece orchestra, and there are tables for guests in all these rooms.

I saw Mr. Cory the night of the raid. Mr. Cory came in with about six or seven men dressed in dark shirts and dark rimmed glasses. They came in as if they were going to hold up the place. I was on the dance floor and I came out to stop them. I said to them, "Nobody has committed any murder around here, why cause all of this?" Mr. Cory said, "You are under arrest". I then sat down, and there were no words after that.

These three bottles of liquor introduced in evidence, which purported to be bottles of Sandy Mac Donald Scotch and two bottles of gin were the contents of a lot of gin from different tables, and they poured it into those two bottles right in front of my very eyes. I said, "What are you taking that along for"? And Mr. Cory said, "Well, we will give you life for that." I never exercised the right of proprietorship or ownership over those three bottles. I didn't know they were in the house. Guests had brought them in there. Mr. Cory stated to me that if we turned Ellis up, he would let us go as he had nothing on us two boys.

I severed my connection with the establishment on the 30th day of September. I know nothing about the sale Mr. Cory testified about. I do not know what



(Testimony of Herman E. Landfield.)

these bottles contained. It might be gin, water or gasoline or anything else. I had no connection whatsoever with government exhibit No. 2, that is, the alleged bottle of Scotch.

#### CROSS EXAMINATION.

I never o.k.ed the sale of any liquor at all. There was never any liquor sold there to Mr. Cory or anyone else. I did not see Mr. Ahlin at any time. The first time I saw him was in this Courtroom here about a week ago. I haven't seen Mr. Ellis since the place was raided. I hadn't seen Ellis for three or four days after these people were in my place. He was just a guest there. I did not introduce Ellis to Mr. Cory. He knew Ellis before I did. I know nothing about the White Rock bottle containing gin or the pint flask containing whisky. I saw the officers gather it up, and they hit one fellow over the eye, and his eye puffed out, and they sat him at a table and talked to him a few minutes, and I asked the officers why they didn't take him down, because he had that Scotch. Mr. Cory said, "Well, he is a young fellow and we will let him go". One of the officers hit him and I came running in and there was about four of them on this poor fellow, and then I said that nobody had committed murder in the place. I don't know a thing about this liquor.

I have boxed for about eighteen years, and at one time held the championship of the World. Mr. Cory

(Testimony of Herman E. Landfield.)

asked me where I belonged, and I showed him my Masonic receipt.

Reporter's Transcript—Page 72, Line 11, to  
Page 72, Line 26.)

“THE COURT: Q Where is this place in Glendale?”

A 1120 South San Fernando Boulevard.

Q Inside of the City of Glendale?

A Yes, sir.

Q All of these statements of these witnesses have made that they bought liquor there at your place from you or through you is all false?

A Absolutely, your Honor.

Q They have just come here and told a deliberate falsehood?

MR. WILLIAMS: We will have to object to that question, Your Honor, on the ground it is argumentative.

THE COURT: Overruled.

MR. WILLIAMS: Exception.

THE COURT: Q That is a fact, is it not?

A Yes, sir.”

(Witness continuing) I had no proprietary interest in the place. It was my duty to run the place as a restaurant. We were getting \$2.50 for our meals, and we served a wonderful chicken dinner. I had the waiters notify me when there was liquor brought around there, and I told the guests that they would have to refrain from bringing liquor in there or they

(Testimony of Herman E. Landfield.)

would have to quit coming there. I could not search the people, when I saw it, I would tell them not to bring any liquor around the place or on the premises.

We had officers come in from Glendale and look around and they never found anything while the place was under my supervision. I tried my best to keep liquor out.

We would turn away as many as 250 to 300 people on Saturday nights, our special night for dancing. No liquor was ever stored in the place to my knowledge. When I found liquor in their possession, I turned people out of there, or had them escorted out of the place. .

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The above and foregoing was all of the evidence offered or received on the trial of the above entitled cause.

Defendants rest.

Thereupon, the defendants, by their counsel, move the Court to direct the Jury to return a verdict of "Not Guilty" for the reason that the evidence introduced did not show the defendants or either of them, to be guilty of any of the counts charged in the Information; which said Motion was denied by the Court, to which ruling of the Court defendants then and there duly excepted.

(Reporter's Transcript, Page 75, Line 3, to  
Page 75, Line 26).

“MR. WILLIAMS: The defendants rest, with this exception: I desire at this time to renew my motions

THE COURT: Denied.

MR. WILLIAMS: Just a moment. I haven't made my motions.

THE COURT: It may be considered as having been made and denied.

MR. WILLIAMS: For the purpose of the record I desire to make the motion on behalf of Defendants Landfield and Oliver.

THE COURT: It may be considered as having been made to each defendant on each count, the motion to dismiss on each count, and it is denied. Proceed.

MR. WILLIAMS: I desire to make my motion, if the Court please.

THE COURT: It may be regarded as having been made to each count and as to each defendant, and denied.

MR. WILLIAMS: Exception. On Count 3 there is no testimony to substantiate that count, and I move that that be dismissed.

THE COURT: Denied.

MR. WILLIAMS: I don't want to have any argument.

THE COURT: Any rebuttal?

MR. Mc GANN: No rebuttal.”

And, thereupon, the Court charged the Jury, which said charge, together with the exceptions to the Court's rulings thereupon are as follows:

(Reporter's Transcript—Page 76, Line 14, to Page 94, Line 23).

“THE COURT: Gentlemen of the Jury, I will ask you to listen carefully to the instructions of the Court, which will guide you in your deliberations.

These defendants are charged with four different violations of the United States statute known as the Federal Prohibition law, enacted to bring about and make possible the practical and effective enforcement of the Eighteenth Amendment to the Federal Constitution, and it is charged in the first count that these defendants here on trial, and the other defendant who is not apprehended, John Doe Ellis, did knowingly, wilfully and unlawfully sell for beverage purposes to one I. W. Cory, one bottle of intoxicating liquor for \$5.00; that on the 30th day of July they sold one C. W. Ahlin one bottle of intoxicating liquor for \$7.00; on the 7th day of August they sold to one Paul Hook one bottle of intoxicating liquor for \$7.00; and that, on or about the 29th day of August they had in their possession about three quarts and one pint of intoxicating liquor, and that on the same day, the 29th day of August, they were maintaining a common nuisance, towit, a room, building and place at Glendale Tavern, 1120 South San Fernando Boulevard, Los Angeles, County of Los Angeles, where intoxicating

liquor was then and there manufactured, kept, sold and bartered, for beverage purposes. And to these counts the defendants on trial, Landfield and Oliver, have interposed pleas of not guilty, and it is for you to say now, having heard the evidence, whether they have conducted themselves as alleged, or not.

Now, this information, of course, is no evidence itself against the defendants, the question is, what does the proof show. You are not to be prejudiced against the defendants because an information is on file; you are to arrive at a determination that shall be free from prejudice and passion, based fully upon a careful consideration of the evidence.

Now, there are two defendants here, and unless one of them shall be especially mentioned during the course of these instructions—and I refer to ‘defendant’—you will understand that I am referring to both of them and each of them, remembering that each one stands upon his own feet; each one is to be convicted or acquitted, as the case may be, from a consideration of the evidence as it is applicable to him. The conviction or acquittal of one defendant, whichever it might be, would be of itself no evidence of the guilt or innocence of the other defendant. The question is in each case what evidence is relevant to each defendant whose guilt or innocence is under consideration, and what is the effect of that evidence.

Now, a lot has been said about the punishment in this case, very much of which is irrelevant, and much

of it without any basis of fact. What may have been done in some other case has nothing to do with this case. As a matter of fact, your function is to say whether or not the defendants have conducted themselves as alleged. When you have done that, then in pursuance of whatever verdict you have rendered, the judgment of the Court will be pronounced. If you say they are not guilty, the Court will send them forth free men, but if you say they are guilty, the Court, pursuant to the law and its duty under the law, which the Court cannot shift to anybody else, will pronounce such judgment which it thinks will suffice, in some degree at least, to maintain the dignity of the law of the land, which we are both sworn to uphold and protect. As a matter of fact, it is immaterial. There is not any question about punishment in the Federal Penitentiary for any of the offenses involved in this case, so do not let your minds be diverted by anything like that, because it is not a fact. Whatever punishment is provided is a matter for the Court, and I suggest that you confine yourselves to the consideration only of the question that is open for your consideration. Do not concern yourselves with the question of punishment. You do your duty, and then you just assume that the Court will try its very best with all the competency it possesses to do the duty that devolves upon it. I think you may with complete propriety trust that the good judgment and wise discretion, as much as this Court is able to command it,

will be excised in this case in pronouncing the judgment, if you find the defendant guilty.

You are instructed, also, gentlemen, of course, that you are the exclusive judges of the credibility of the witnesses whose testimony has been admitted in evidence, and of the effect and value of such evidence. It is for you to say what the worth and the weight of the evidence is. It is for you to say what the facts that are proved are. Your power in this regard, however, is not arbitrary, and should not be exercised capriciously, and it should not be exercised with prejudice or passion against anybody, but should be exercised with that calm due, honest, careful and disinterested consideration that ever ought to find its place and keep its abiding placé in American jury rooms. Do not let your minds be diverted from such consideration by passion or prejudice, whatever source it may come, because that is a thing that ought not be permitted to intrude itself into your consideration or become one of the factors of your verdict when you arrive at it.

In this Court it is the privilege of the Court, and the Court may deem it its duty, to comment to the Jury upon the evidence in the case and express its opinion to the Jury upon the facts testified to here, and during the course of these instructions I may express to you some opinion in reference to the facts of the case. If I do, you are to remember at all times that you are in no wise bound by any expression of opinion



coming from the Court with respect to the facts of the case, because the law and the community both look to you and you alone for your own intelligent, independent judgment with respect to what the facts are.

Now, in arriving at your conclusion of the credibility of the witnesses, you will remember that every witness is presumed to speak the truth, but this presumption may be repelled by the manner in which the witness testifies, by his or her appearance upon the witness stand, by the character of the testimony given, that is, whether it is reasonable or unreasonable, probable or improbable, and whether it is in the nature of false or perjured testimony by him or her, as the case may be, or by evidence affecting his or her character for truth, honesty or integrity, or by his or her motives, his or her interest in the outcome of the case, or by any bias that may have been exhibited, or by contradictory evidence.

A witness may be impeached by the party against whom he or she was called, or by contradictory evidence, or by statements made inconsistent with his or her present testimony. If you believe that any witness has been impeached, or that the presumption of truthfulness attaching to the testimony of such witness has been repelled, then you will give the testimony of such witness such credibility as you may think it entitled to.

Now, in this case the defendant Landfield has offered himself as a witness in this case. That is his right, and you are to hear his testimony in accordance with the same rules I have given you with respect to other witnesses in the case, but with this addi-

factor [B. F. B.]

tional effect, which is personal to him: That you consider [B. F. B.]

are to ~~hear~~ his testimony in the light of the fact that he is a defendant in the case and in the light of the fact of his interest in the outcome of the case;

~~but~~ [B. F. B.] you are not entitled to disregard the testimony of a witness because such witness is a defendant. There would be no justice in that. But you

consider [B. F. B.]

are to ~~hear~~ the testimony of the defendant in the light

his [B. F. B.]

of the fact that he is a defendant and ~~is~~ interest in the case in consequence of that fact.

The defendant Oliver has not offered himself as a witness in the case, and that is his right, his Constitutional right. He is entitled to rest upon the weakness or insufficiency of the evidence offered by the Government, if any there be, which has been offered tending to show the commission of the crime. That is just as much his Constitutional right as to be tried by a jury. And you are not to comment among yourselves upon the fact that he did not testify, and you are not to permit that fact to be of any aid or assist-

ance or anything else, in arriving at a verdict one way or the other. The question is, What does the proof actually submitted before you in the case show: When you have considered the facts and determined their force, efficacy and value, then arrive at a verdict based upon such conclusion.

You are not bound to decide in conformity with the declarations of any number of witnesses which do not produce conviction in your minds, against a less number, or against a presumption or other evidence satisfying your minds.

This being a criminal case, the guilt of the defendants must be established beyond a reasonable doubt, and the burden of establishing such guilt rests upon the Government. The law does not require of the defendant that he prove himself innocent, but the law requires the Government to prove the defendant guilty in the manner and form as charged in the information beyond a reasonable doubt, and unless the Government has done this it is the duty of the Jury to acquit.

There are two classes of evidence recognized and admitted in courts of justice, upon either of which juries may lawfully find an accused guilty of crime. The first is direct or positive testimony of an eye-witness to the commission of the crime, one who himself saw the thing done which is itself a violation of the law; the other is testimony in proof of a chain of circumstances pointing sufficiently strong to the commission of the crime by the defendant to justify and require the conclusion that he is guilty, and that

is known as indirect or circumstantial evidence. Such evidence may consist of admissions by the defendant, plans laid for the commission of the crime, circumstances attendant upon its execution, efforts indulged

[B. F. B.] and the like

in to dispose of or conceal the fruits of the crime  $\wedge$  ; in short, any acts, declarations or circumstances admitted in evidence tending to connect the defendant with the commission of the crime. Where

only [B. F. B.]

the evidence is entirely, or even  $\wedge$  partly, circumstantial, yet is not only consistent with the guilt of the defendant, but inconsistent with any other rea-

then [B. F. B.]

sonable conclusion,  $\wedge$  the law makes it the duty of the jury to convict. Now, such indirect or circumstantial evidence, to which I have been referring, may arise from inferences and presumptions, or deductions from the facts proven, made by the Jury either because of the employment of their reason and experience, or made as presumptions because the law directs or says that they may be made from particular facts admitted in evidence. Inferences which are of large use in a case depending on circumstantial evidence, may only be made from facts legally proven to your satisfaction, and are such deductions from such facts as are warranted and justified by a consideration of the usual propensities and passions of men, the particular propensities and passions of the individual whose act is in question, the usual course of business and the course of nature.

The law presumes a defendant charged with crime to be innocent until proven guilty beyond a reasonable doubt. This presumption of innocence remains with the defendant and will of itself avail to acquit him unless it be overcome by proof of his guilt beyond a reasonable doubt. If you can reconcile the evidence before you upon any reasonable hypothesis consistent with the defendant's innocence you should do so, and in that case find such defendant not guilty. Now, a reasonable doubt about which we have been referring is just what it says. It is a doubt based on reason, and which is reasonable in view of all the evidence. After you have fairly, impartially, disinterestedly and without passion or prejudice considered the evidence and are unable to arrive at a conclusion as to what the truth is, if you have a reasonable doubt based upon that consideration, then you have such a reasonable doubt as requires you to bring in a verdict of not guilty. If after an impartial comparison and consideration of all of the evidence, or from a want of sufficient evidence on behalf of the Government to convince you of the truth of the charge, you can candidly say that you are not satisfied of the defendant's guilt, or if you have any misgivings about it, then you have a reasonable doubt and you should acquit him. But if, after such impartial comparison and consideration of all of the evidence you can truthfully say that you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your own

affairs, then you have no reasonable doubt and you should convict him. By such reasonable doubt you are not to understand that all doubt is to be excluded. It is impossible in the determination of these questions to be absolutely certain. You men were not out there at this tavern on San Fernando Boulevard on these occasions in question. You cannot know with absolute certainty just exactly what did take place. You are required to decide the question submitted to you upon the strong probabilities of the case, and to justify a conviction, the probabilities must be so strong as, not to exclude all doubt or possibility of error, but as to exclude reasonable doubt. ~~and~~ [B. F. B.] As long as you have a reasonable doubt of a defendant's guilt you may not convict him. When, however, weighing all of the evidence, you have an abiding conviction and belief that the defendant is guilty, it is your duty to convict, and no sympathy, sympathy for him or for his family, if he have one, or for his plight, or anything of that sort, justifies you in seeking for doubts by any strained or unreasonable construction or interpretation of the law or evidence or facts.

Now, it is also the law, gentlemen, relevant to the matters to be submitted to you, that whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, induces, or procures its commission, is a principal and is to be prosecuted and punished just exactly as the principal is. That means that while it may be true

that one man himself does the thing which the law denominates may not be done: one man sells the liquor, one man goes and gets the liquor, or one man does consummation of the [B. F. B.] something else to bring about the transaction which is forbidden by the law, and another man aids, abets, counsels, commands, induces or procures the commission of the crime and knowingly helps to make it possible to be done, and knowingly helps to contribute to its success, then he is just as guilty as the other man, because it cannot be said that one man handles the money and the other gets the liquor and that he can, for that reason, be the only one that is guilty. As I have indicated to you, whoever aids, abets, commands, induces or procures the doing of that thing is just as responsible and is just as much subject to prosecution and punishment as the one who commits the offense.

Now, the National Prohibition Law, under which these men are prosecuted, provides, among other things: 'When used in this Title the word 'liquor' or the phrase 'intoxicating liquor' shall be construed to include alcohol, brandy, whisky, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous vinous, malt or fermented liquor, by whatever name called, containing one-half of one percentum or more of alcohol by volume, which are fit for use for beverage purposes.' It is further provided that: 'No person shall on or after the date when the Eighteenth Amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxi-

cating liquor except as authorized in this act.' And the only authorization in the Act was the authorization for non-beverage purposes, such as for medicinal, scientific and sacramental purposes. That is not involved here at all. No one has suggested that this liquor was used for those particular purposes. The only other authorized [B. F. B.]

thing involved in the Act is liquor lawfully used in your own home, and which was lawfully acquired before the Eighteenth Amendment went into effect, and therefore subject to the use of yourself and your friends who can stand it and take the chances with you. That is not involved here, and you are not to concern yourselves about that. Then it is also provided: 'That any room, house, building, boat, vehicle, structure or place where intoxicating liquor is manufactured, sold, kept or bartered in violation of this Act, and all intoxicating liquor and property kept and used in maintaining the same, is hereby declared to be a common nuisance and any person who maintains such a common nuisance shall be guilty of a misdemeanor . . . ' and punished as provided by law.

Now, so much, gentlemen, as to the law involved in the case, just a word or two as to the facts: These defendants are charged in three counts with having sold liquor, and one count with having possession of liquor, and in the remaining count of having maintained a nuisance. Now, it is true as to the third count, as I remember the evidence, there is not any evidence of a sale of liquor under and pursuant to the terms of that count, so, as to that count, I think it is your plain



duty to return a verdict of not guilty. There is no evidence as to the matters charged in that count. Now, there is evidence in the case—the weight of the sufficiency of it is for you, of course—as to the other remaining counts, and it is your duty to determine the guilt or innocence of the defendants in respect to them also. Now, if you believe the testimony of the Government agents who went out to this place, as they say, and as they say, made purchases of liquor there at that place, and that the defendant Landfield, who was apparently in charge in some capacity, aiding, abetting and cooperating, and making it possible for the liquor to be purchased, if you believe that, and believe it beyond a reasonable doubt, that it is a fact, why, of course, he is just as responsible as if he himself had produced the liquor and sold the liquor and taken the money, carried the liquor and did everything about it; and if the defendant Oliver, as testified by some of the witnesses, cooperated, collaborated with that and knew what was going on, and contributed to it, aided and abetted in so far as he did, why, he would be guilty, of course, of the thing with respect to which he did cooperate and collaborate, remembering, of course, that the guilt of a person has to be determined by what that person does and not by what some other person does or says.

Then with respect to the counts charging possession: There is testimony that the officers went out there on this night of the so-called raid, and they found these three quarts of liquor. If, under all of the circumstances of the case, you believe that liquor

was being sold there by these defendants, as testified to by the officers who went there on this occasion, and if you believe from all the circumstances presented in the evidence that the people who had liquor there were people who had bought liquor, as the officers have testified they bought it previously, and the defendants knew that, then, of course, they would be responsible for the liquor on the premises and should be found guilty as charged, if you believe that beyond a reasonable doubt. By the same token, if you believe that these defendants either or both of them, cooperating together or acting independently, were maintaining that place out there as it has been referred to [B. F. B.]

~~admitted~~ by somebody in the evidence, that it was a high class restaurant, if you believe it was maintained and the persons maintaining it, either in the position of waiter or manager or otherwise, were maintaining it as a place where liquor could be kept and sold, of course, it would be maintained and kept in violation of law and the maintaining of the place would be a common nuisance and you should find the persons maintaining that place guilty as charged, if you believe that was the fact beyond a reasonable doubt.

Now, the defendants—at least the defendant Landfield—meets the charge against him by testimony to the effect that he did not know there was any liquor there at any time; that he didn't sell any liquor and was not a party to the sale of any liquor and did

not know that liquor was being sold. Now, if you  
[B. F. B.] or have  
believe that from all of the evidence ~~and beyond~~ a  
as to whether [B. F. B.]

reasonable doubt ~~that~~ that is the case, you should  
acquit him, because no man ought to be convicted  
for something that takes place, even if it takes  
place in his own house and he had no knowledge of  
it. I say, you cannot convict him in that event, be-  
cause there would be no justice in that,—if he did  
not know it was being done, and that it took place  
without his privity or criminal cooperation;—if you

[B. F. B.] or have a reasonable doubt as to whether  
believe that is a fact ~~and believe it beyond a reason-~~  
~~able doubt~~ the defendants were ignorant of what was  
going on, ignorant of the fact that liquor was there  
on this occasion, ignorant of the fact that liquor was  
being maintained there, (if you believe that liquor was  
being maintained there), and ignorant of the fact that  
sales were being made, (if sales were being made),  
you should acquit them, because you could not then  
believe beyond a reasonable doubt that they were  
responsible for the things that took place there with  
respect to the sale of liquor and the maintenance of a  
place where liquor was kept and sold. So it comes  
down finally, gentlemen, to a question of whom you  
are going to believe.

There has been some slight suggestion—I say slight  
[B. F. B.] in argument  
suggestion, it was rather lengthily elaborated upon, A

to the effect that you don't know whether the stuff in these bottles contains more than one-half of one percent of alcohol by volume. I think it hardly worth the time of the Court to elaborate upon that. It could easily be true that somebody might have diffi-

whether [B. F. B.]

culty in saying ~~what~~ near beer or beer or some other similar substance might or might not contain one-half of one percent or more of alcohol, or thereabouts, but it would hardly seem that anybody with any experience at all, anybody that was not born day before yesterday, could not tell what gin and whisky is. That is what the testimony is, that it was gin and whisky. That is all the testimony is, that gin and whisky was purchased. So, gentlemen, don't let your minds be diverted by any unsubstantial, specious argument like that. It is for you to say what the facts are, what the proof is, and you cannot convict the defendants if you do not believe they sold these things containing more than one-half on one percent of alcohol. If they did sell it, it would be hardly reasonable to conclude that they were selling something that contained less than one-half on one percent of alcohol; it would hardly be reasonable to believe that an article of that kind was sold for \$5.00 and \$7.00 a bottle, if you find it was sold for that, so the whole thing, after you simmer it down, depends upon whether you believe these officers or agents or the defendants. The defendant Landfield says that ~~the officers~~ [B. F. B.] the testimony given by the officers was an out and out

falsehood, plain perjury. That is the case if his story is to be accepted:—that he didn't know of the sales

[B. F. B.] that being made and didn't participate in the sales; ~~then~~ these officers have come here and deliberately perjured themselves; because there cannot be any question under the circumstances but that they went there on these occasions and that they there met and talked with the defendant. No doubt about that. It is hardly a case of mistaken identity or mistaken location. So it is just a question of what you are going to conclude. Are you going to conclude that these officers have come here and deliberately perjured themselves, or are you going to conclude that the defendant, for the purpose of removing the consequences of his own wrong doing, if he did do wrong, has testified falsely in order to escape the consequences. Both of them cannot be telling the truth. You have to determine one way or the other as to where the truth lies. You have to be [B. F. B.]

come to a conclusion that will  $\wedge$  fair under all of the circumstances, free from prejudice, giving the thing the calm, deliberate, careful and close consideration that it requires at your hands, and that it is your duty to give it, remembering that if you have a reasonable doubt of the guilt of the defendants of course you should acquit them, but if you believe beyond a reasonable doubt that they have conducted themselves as alleged, either of them, it is your plain duty to convict them. Any exceptions to the charge?

“MR. WILLIAMS: On behalf of the defendants, I desire to note an exception to your Honor’s charge, and the whole thereof, and in particular to the charge as to the Court’s duty in commenting on the evidence; also I desire to note an exception to your Honor’s charge as to the impeachment of witnesses; I also desire to note an exception to your Honor’s charge on the interest of the defendant Landfield. I also desire to note an exception to your Honor’s charge and comment on principal and accessory, aider and abetter. I also desire to note an exception as to the defendant Oliver. I also desire to note an exception to the instruction and comment on the possession of the liquor. I also desire to note an exception to the comment and instruction as to the alcoholic content of the alleged liquor. I also desire to note an exception to the comment and instruction as to the testimony of the Government officers. I also desire on behalf of the defendants to note an exception to the failure of the Court to give the instructions requested by the defendants.

THE COURT: Your verdict will be in the usual form, which has been prepared for your convenience by the Clerk. When you have arrived at a verdict, if you do, your foreman will sign the same and return it into open court. I will ask you to retire with the officer.”

Which said charge of the Court above set forth comprises all of the instructions given to the Jury in said cause.

Whereupon the defendants requested the following instructions, which instructions were refused by the Trial Court, to which refusal, defendants objected and excepted.

“The fact that the defendants, Landfield and Oliver, were friendly, or even intimately friendly, with the defendant, Ellis, is not a circumstance in itself to be considered against them, neither is it sufficient to show that these defendants were involved with the said Ellis in the commission of said offense, if any was committed, but the prosecution must connect the defendants, Landfield and Oliver in some way with the commission of the alleged offense and no presumption is to be indulged in against them because the evidence may point to the guilty of the co-defendant, Ellis.

DEFENDANTS' INSTRUCTION NO. 3

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Judge.”

\* \* \* \* \*

“For one person to abet another person in the commission of a criminal offense, means for him to knowingly and with criminal intent, aid, promote, encourage or instigate, by act or counsel, or both by act and counsel, the commission of such criminal offense.

DEFENDANTS' INSTRUCTION NO. 15

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Judge.”

\* \* \* \* \*

“Each defendant herein is charged under one Count of this Information with knowingly, wilfully, and

unlawfully maintaining a building and place where intoxicating liquors, for beverage purposes, were kept, sold, and bartered in violation of law, and you are instructed that it is incumbent upon the government to prove that the liquors were so kept by the defendants in said building, charged in the information, for the purposes charged therein, and it is not sufficient for the government to show that certain intoxicants were found in the said building in the possession of others, but they must go further and show that the defendants had said intoxicants, if any, in their possession or control, or that they were there with the knowledge of defendants or either of them.

DEFENDANTS' INSTRUCTION NO. 18.

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Judge."

And thereupon, towit: February 24, 1925, the Jury returned a verdict of "Guilty", finding the defendant, Landfield "Guilty" upon the first, second, fourth and fifth counts in said Information contained; and the said defendant, Oliver, "Guilty" of the offenses set forth in the fourth and fifth counts of the Information.

That the time for sentencing the said defendants was continued by the Court to the 25th day of February, 1925, upon which date a Motion for a New Trial was filed and argued in behalf of each defendant, for the reason set forth in said Motion for a New Trial, towit: That the evidence was insufficient to show either of the defendants guilty of the offenses charged against them in said Information aforesaid,



and thereupon, the Court having heard the Motion of said defendants for a New Trial, made its Order denying said Motion, to which ruling, the exception of the defendants and each of them was duly made and entered, and thereupon the Court rendered its Judgment and Sentence upon said Verdict, which Judgment and sentence is as follows:

That the defendant, Landfield, upon the first Count in said Information contained, be adjudged and sentenced to serve a term of six (6) months in the Orange County Jail, in the County of Orange, State of California, to serve a term of six (6) months in the Orange County Jail, in the County of Orange, State of California, upon the second Count in the said Information in the above entitled action, and to pay a fine of One Dollar, (\$1.00) upon the fourth Count in said Information in the above entitled cause contained, and upon the fifth Count of said Information contained, that said Herman Landfield be adjudged and sentenced to serve a term of one (1) year in the Orange County Jail, and to pay a fine of One Thousand Dollars, (\$1,000.00), said Herman Landfield to be committed until the payment of said fines, and the said Judgment against the said Herman Landfield upon the first second and fifth Counts, as far as same relate to imprisonment, to be served concurrently; and said above entitled Court did then give and render and make its Judgment against the defendant herein, J. W. Oliver, whereby said defendant, J. W. Oliver was adjudged and sentenced upon the fourth Count in said

Information contained, to pay a fine of One Dollars, (\$1.00) and to be committed until said fine was paid; and upon the fifth Count in said Information contained, to be confined in the Orange County Jail in the County of Orange, State of California for the period of six (6) months, to which sentence, the exceptions of the defendants were duly taken and allowed.

That the Court instructed the Jury to bring in a verdict of "Not Guilty" on the third Count in the Information contained, as to both defendants, and that the Jury brought in its verdict finding the defendants "Not Guilty" on said third Count in said Information contained.

That thereupon, on the 5th day of March, 1925, the defendants duly and regularly filed in said Court their Petition for a Writ of Error, and concurrently therewith, their Assignment of Errors. That the Court at said time allowed said Writ of Error and fixed a Supersedeas Bond upon Appeal in the sum of ten thousand (\$10,000.00) dollars, for the defendant, Landfield, and for the defendant, Oliver, in the sum of five thousand (\$5,000.00) dollars.

That thereupon, and on the 5th day of March, 1925, a Writ of Error was duly issued in said cause, returnable before the United States Circuit Court of Appeals, for the Ninth Circuit.

That thereupon, towit: March 7th, 1925, Citation upon said Writ of Error was duly issued, served upon the United States District Attorney and filed with the Clerk of said Court.

The Information, Petition for a Writ of Error, Assignment of Errors, Motion for New Trial, and the various Orders and proceedings of the Court referred to herein, are fully set out in the printed record on appeal of the Clerk, to be filed herein and ordered to be printed herewith.

And, for as much as the evidence and proceedings and matters of exception above set forth do not fully appear of record, the defendants, by their attorneys, tender this Bill of Exceptions and pray that the same be signed and sealed by the Court herein, pursuant to the statute in such case made and provided.

Warren L Williams

Seymour S Silverton

Attorneys for Appealing Defendants.

PRESENTATION OF BILL OF EXCEPTIONS,  
NOTICE THEREOF AND STIPULATION  
FOR SETTLEMENT AND ALLOWANCE.

Defendants herein, Herman Landfield and J. W. Oliver, hereby present the foregoing as their Bill of Exceptions herein and respectfully ask that the same may be allowed.

Warren L. Williams

Seymour S Silverton

Attorneys for Appealing Defendants.

TO S. W. Mc NABB, ESQUIRE, UNITED STATES  
DISTRICT ATTORNEY FOR THE SOUTH-  
ERN DISTRICT OF CALIFORNIA:

You will please take notice that the foregoing constitutes and is the proposed Bill of Exceptions from

the defendants in the above entitled action, and the said defendants will ask for allowance of the same.

Warren L Williams

Seymour S Silverton

Attorneys for Appealing Defendants.

Service of the foregoing Bill of Exceptions is hereby acknowledged this 9th day of March, 1925

S W McNabb, U. S. Attorney

Eugene T. McGann

Spec. Asst UNITED STATES DISTRICT ATTOR-  
NEY FOR THE UNITED STATES  
OF AMERICA.

STIPULATION AS TO CORRECTNESS OF BILL  
OF EXCEPTIONS.

It is hereby stipulated that the foregoing Bill of Exceptions contains a statement of all the evidence adduced at said trial, together with the complete charge of the Court to the Jury and other matters therein set forth, and that the same is correct and may be settled and allowed by the Court.

Warren L Williams

Seymour S Silverton

Attorneys for Appealing Defendants.

S W McNabb

U. S. Attorney

Eugene T. McGann

Attorney for United States of America.

ORDER ALLOWING BILL OF EXCEPTIONS  
AND MAKING THE SAME PART OF  
THE RECORD.

The foregoing Bill of Exceptions having been duly presented to the Court, the same is hereby duly allowed and signed and made a part of the records in this cause.

March 12, 1925

Bledsoe

Judge

DATED: This ——— day of March, 1925.

\_\_\_\_\_  
Judge.

\* \* \* \* \*

[ENDORSED]: No. 6793-B Criminal IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION. THE UNITED STATES OF AMERICA, Plaintiff -vs- HERMAN LANDFIELD, J. W. OLIVER and JOHN DOE ELLIS, Defendants. BILL OF EXCEPTIONS ON BEHALF OF HERMAN LANDFIELD and J W OLIVER DEFENDANTS HEREIN. Received Copy of Within this 9th day of March, 1925. S. W. McNabb U. S. Attorney. Eugene T. McGann Spec. Asst. U. S. Atty. FILED MAR. 13 1925 CHAS. N. WILLIAMS, Clerk Murray E. Wire Deputy WARREN L. WILLIAMS S. S. SILVERTON 419 Ferguson Bldg. 307 So. Hill Street LOS ANGELES, CAL. Bdwy. 7881 Bdwy. 7880 Attorneys for Defendants, Landfield and Oliver

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

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THE UNITED STATES OF AMERICA,	)	NO. 6793-B Criminal
	)	
-vs-	Plaintiff,	) ASSIGNMENT OF
		) ERRORS ON BE-
HERMAN LANDFIELD,	)	) HALF OF LAND-
J. W. OLIVER and JOHN	)	) FIELD and OLIVER.
DOE ELLIS,	)	) DEFENDANTS
	)	) HEREIN
Defendants.	)	)

Come now HERMAN LANDFIELD and J. W. OLIVER, two of the defendants above named, and file the following Statement and Assignment of Errors, upon which they, and each of them, will rely in the prosecution of a Writ of Error of the above entitled cause, a Petition for which Writ on behalf of both the defendants, Herman Landfield and J. W. Oliver, is filed at the same time with this Assignment, which Assignment of Errors, these defendants allege, occurred upon the trial of the above entitled cause.

I.

The trial Court erred in admitting incompetent evidence and secondary evidence, to defendants prejudice in this, towit:

That the Court permitted Government witness, I. H. Cory, to testify as to the contents of a certain card without introducing the said card in evidence, or pro-

ducing the same, which questions, objections, answers and exceptions are as follows:

“A (Continuing) I told the waiter that we wanted to see the proprietor and he went away and very shortly Mr. Landfield came over. We had a table for four and I asked Mr. Landfield to take a seat, that *i* wanted to talk to him. He sat down in the empty chair and I took a card from my pocket, which had been given to me by a man by the name of George Cook, whom I afterwards arrested at this place.

THE COURT: What was that? I didn't catch that.

(Answer Read)

MR. WILLIAMS: I move that the words “whom I afterwards arrested at this place” be stricken out as immaterial.

THE COURT: That may be stricken out

A (Continuing) This card was an o.k. card, so called, and I handed it to Mr. Landfield—

MR. WILLIAMS: We object to any testimony concerning the card, on the ground that it is not the best evidence.

THE COURT: Overruled.

MR. WILLIAMS: Exception.”

(Reporter's Transcript—Page 4, Line 8, to Page 4, Line 26.)

Without laying any foundation for the admission of said testimony, and upon the objection being made by the defendants that the evidence was not the best evidence, the defendants hereby assign the admission of said testimony in evidence as prejudicial error for the

reason that it was so highly prejudicial in its character that, in view of all the other evidence in the case, it is shown that by its admission, the jury was led to convict the defendants by reason of passion and prejudice, and not upon the legal evidence introduced at the trial of said cause, and the objections of the defendants to such questions, and their exceptions to the ruling of the Court were duly taken and allowed.

## II.

The trial Court erred in admitting incompetent evidence, to defendants' prejudice in this, towit:

That the Court permitted the government witness, Cory, to testify over the objections of the defendants that a certain bottle contained gin, and permitted the said bottle to be introduced in evidence over the objection of the defendants that no foundation had been laid for the admission of said testimony, and for the introduction of said Exhibit, which questions, objections and answers are as follows, towit:

"A I first saw that bottle when Mr. Ellis handed it to me in the small room in the Glendale Tavern in the presence of Mr. Landfield. I paid him \$5.00 for it.

Q. What date was that?

A It is marked here (indicating) "Date of buy 7/28/24." The 28th day of July, 1924. "Paid, \$5.50."

Q Did you examine the contents of that bottle at the time?

A I drank two drinks of it; yes, sir.

Q What is it?

A Gin.



MR. WILLIAMS: I object to that as calling for a conclusion of the witness, and no proper foundation laid for the question.

THE COURT: Do you know gin when you taste it?

A Yes, sir.

Q Have you had enough experience to know what it is if you taste it?

A Yes, sir.

THE COURT: Overruled.

MR. WILLIAMS: Exception.

MR. Mc GANN: I will ask that this be admitted in evidence.

MR. WILLIAMS: I object to it on the ground that there is no proper foundation laid for its introduction.

THE COURT: In what way is there no proper foundation laid?

MR. WILLIAMS: No foundation laid in this: That the witness has not been properly qualified to testify as to what the contents of this bottle is.

THE COURT: It is a matter of common knowledge what gin contains. Did it contain more than one-half of one per cent. of alcohol by volume?

A It did.

MR. WILLIAMS: I object to that on the ground that the witness is not qualified to testify to that.

THE COURT: Overruled.

MR. WILLIAMS: Exception.

THE COURT: All right. Go on."

(Reporter's Transcript—Page 8, Line 1, to Page 9, Line 13.)

Without laying any foundation for the admission of said testimony, and upon the objection being made by the defendants that the evidence was not the best evidence, the defendants hereby assign the admission of said testimony in evidence as prejudicial error for the reason that it was so highly prejudicial in its character that, in view of all the other evidence in the case, it is shown that by its admission, the jury was led to convict the defendants by reason of passion and prejudice, and not upon the legal evidence introduced at the trial of said cause, and the objections of the defendants to such questions, and their exceptions to the ruling of the Court were duly taken and allowed.

### III.

The trial Court erred in admitting incompetent evidence to defendants' prejudice, in this, towit:

In that the government witness, Cory, was permitted to express his conclusion as to the proprietor of said Cafe, objection being made upon the grounds that said evidence called for a conclusion of the witness, which questions, objections, Answers and exceptions are as follows:

“MR. WILLIAMS: Exception.

A (Continuing) I sent for the proprietor through the waiter—

MR. WILLIAMS: I move that that be stricken out as immaterial and calling for a conclusion of the witness.

THE COURT: Denied.

MR. WILLIAMS: Exception.”

(Reporter's Transcript—Page 10, Line 5 to Page 10 Line 11)

The admission of which evidence over the objection of these defendants, these defendants hereby assign, in view of the other evidence in this case, as highly prejudicial to these defendants.

IV.

The trial Court erred in admitting incompetent, immaterial and irrelevant evidence to defendants' prejudice, towit:

That the Court refused to strike out on Motion of the defendants, certain statements made by plaintiff's witness, I. H. Cory, which questions, objections, answers and exceptions are as follows:

"A (Continuing) Mr. Landfield again went back into the room where he had delivered me the gin, rather, where the gin was sold to me—

MR. WILLIAMS: I move that "where the gin was sold to me" be stricken out as immaterial.

THE COURT: Denied.

MR. WILLIAMS: Exception."

(Reporter's Transcript—Page 11, Line 4, to Page 11, Line 10.)

The admission of which evidence over the objection of the defendants, and the Court's refusal to strike the same out, but to permit said answers to remain in the record, these defendants hereby assign, in view of the other evidence in this case, as highly prejudicial to themselves.

## V.

The trial Court erred in admitting incompetent evidence and evidence calling for the conclusion of the witness without proper foundation being laid for its admission, to be introduced, to the defendants' prejudice, in this, towit:

That the Court overruled the objection of the defendants to questions propounded to the government witness, I. H. Cory, relative to the contents of a certain bottle, which questions, objections, answers and exceptions are as follows:

“Q. What would you say the contents of the bottle was?

MR. WILLIAMS: I object to that as immaterial, calling for a conclusion of the witness, and no proper foundation laid.

THE COURT: Overruled.

MR. WILLIAMS: Exception.

A I would say that it is Scotch Whisky.

THE COURT: Do you know Scotch Whisky when you taste it?

A Yes, sir.

MR. WILLIAMS: We object to his statement that he knows Scotch Whisky when he tastes it, and I renew my objection that the proper foundation has not been laid.

THE COURT: Some people, I suppose, know it. This witness says he does. Overruled.

MR. WILLIAMS: Exception.

MR. Mc GANN: I ask at this time to introduce in evidence Government's Exhibit No. 2.

MR. WILLIAMS: The same objection. No proper foundation laid.

THE COURT: Overruled. In what respect is the foundation insufficient?

Mr. WILLIAMS: It has not been shown what the bottle contains. It might be gingerale, from the color of it, for all we know.

THE COURT: I know, but color is not the only thing that goes into the consideration of what it is. If he said he looked at the color and said it was Scotch Whiskey, that would be different, but he didn't do that. He said he tasted it. Overruled.

MR. WILLIAMS: Exception."

Reporter's Transcript—Page 12, Line 1, to Page 13, Line 4.)

The admission of which evidetnce over the objection of the defendants, and the Court's refusal to strike the same out, but to permit said answers to remain in the record, these defendants hereby assign, in view of the other evidence in this case, as highly prejudicial to themselves.

## VI.

The trial Court erred in admitting incompetent and immaterial evidence, to the defendants' prejudice, to-wit:

That the Court permitted certain questions, and refused to strike out answers relating to a certain raid being conducted upon the premises, known as the Glendale Tavern, and to permit the government agents to testify as to what occurred at said place at said time, and as to the conclusions of certain witnesses

relative to certain acts committed at the time of said raid, all of which questions, objections, answers and exceptions are as follows:

“MR. Mc GANN: Q. Who was present at the time of the raid?

A Agent Glynn, Agent Plunkett, Whittier, Hooke and Agent Cass from San Diego, and Agent Tyson of the Los Angeles office. We went there on a search warrant which I had procured on affidavit before United States Commissioner Long, alleging these sales.

MR. WILLIAMS: I move it be stricken out as immaterial and not the best evidence.

THE COURT: Denied. It is harmless.

MR. WILLIAMS: Exception.

MR. Mc GANN: Q Then what did you do?

A We entered the place, and immediately the place was in an uproar.

MR. WILLIAMS: I move that be stricken out as a conclusion.

THE COURT: Denied. Harmless.

MR. WILLIAMS: Exception.

A (Continuing) And bottles were thrown to the floor and broken, bottles and glasses were thrown around, and one agent was assaulted, Agent Cass, I believe.

MR. WILLIAMS: I move that all of that be stricken out as calling for a conclusion of the witness.

THE COURT: Denied.

MR. WILLIAMS: Exception.

A (Continuing) During it all we succeeded in getting from the tables, or thereabouts, three bottles, two

bottles of gin and one bottle containing Scotch Whiskey, about half full. I arrested Mr. Landfield and Mr. Oliver, and this George Cook, who had given me the o.k. card from the first place, and who at that time was acting as a waiter for Mr. Landfield.

MR. WILLIAMS: I move that that answer be stricken out as immaterial and no foundation laid.

THE COURT: Denied.

MR. WILLIAMS: Exception.

A (Continuing) At that time I took Mr. Landfield and sat him down in a chair, and he got up and started to run around, and I sat him down again and told him I didn't want him to get up again or I would put the handcuffs on him, and that he had better be a little quiet. He said, "Well, I am not responsible for this stuff in my place." He said, "The guests brought it in and how am I going to keep them out?" I said, "Mr. Landfield, that is your business. If you have liquor that is in the quantity that it is in this place, and let your guests bring it in, and you don't stop them, you are responsible, and the Federal Government are going to keep your place clean."

MR. WILLIAMS: We object to all of that and move that it be stricken out as immaterial.

THE COURT: Denied.

MR. WILLIAMS: Exception."

Reporter's Transcript—Page 13, Line 26, to Page 15, Line 25."

Without laying any foundation for the admission of said testimony, and upon the objection being made by the defendants that the evidence was not the best evi-

dence, the defendants hereby assign the admission of said testimony in evidence as prejudicial error for the reason that it was so highly prejudicial in its character that, in view of all the other evidence in the case, it is shown that by its admission, the jury was led to convict the defendants by reason of passion and prejudice, and not upon the legal evidence introduced at the trial of said cause, and the objections of the defendants to such questions, and their exceptions to the ruling of the Court were duly taken and allowed.

## VII.

The trial Court erred in admitting incompetent evidence and hearsay evidence, to defendants' prejudice, in this, towit:

That the Court permitted the government witness, Cory, to state what a label on a bottle showed as to the time of the raid, which questions, objections, answers and exceptions are as follows:

"A These three bottles were found in the premises at the time of the raid on the 28th day of August, it says here, (indicating).

MR. WILLIAMS: I move that "it shows here" be stricken out as hearsay.

THE COURT: Denied.

MR. WILLIAMS: Exception."

(Reporter's Transcript—Page 16, Line 2, to Page 16, Line 8.)

Without laying any foundation for the admission of said testimony, and upon the objection being made by the defendants that the evidence was not the best evidence, the defendants hereby assign the admission of



said testimony in evidence, as prejudicial error for the reason that it was so highly prejudicial in its character that, in view of all the other evidence in the case, it is shown that by its admission, the jury was led to convict the defendants by reason of passion and prejudice, and not upon the legal evidence introduced at the trial of said cause, and the objections of the defendants to such questions, and their exceptions to the ruling of the Court were duly taken and allowed.

VIII.

That the Trial Court erred in admitting incompetent evidence to defendants' prejudice, in this, towit:

That the Court overruled the objections of the defendants to the introduction into evidence of government exhibit number three, without any foundation being laid for the introduction into evidence of said government's exhibit number three.

“MR. Mc GANN: Q Now, did you examine the contents of the three bottles at that time?

A Yes, sir; I did.

Q What sort of an examination did you make, Mr. Cory?

A I sat at the table there making the return on the search warrant, and as the agents found the liquor they brought it over to me and I smelled it and tested it to make sure what it was, and then I gave Mr. Landfield a return on the search warrant for them.

Q What did you find the contents of these bottles to be?

A These two bottles, so-called "gin." This other bottle is Scotch Whisky.

MR. WILLIAMS: I move that that answer be stricken out on the ground there is no proper foundation laid and calling for a conclusion of the witness.

THE COURT: Overruled.

MR. WILLIAMS: Exception.

MR. Mc GANN: I ask at this time, if the Court pleases, that the three bottles, the two bottles of gin and the one bottle of Scotch Whisky, be accepted in evidence as Government's Exhibit No. 3.

MR. WILLIAMS: I object to their introduction as immaterial, and no proper foundation laid.

THE COURT: Are you still bothered with the color, or is it something else?

MR. WILLIAMS: The color looks quite natural. It looks like water.

THE COURT: In what respect is the foundation insufficient?

MR. WILLIAMS: This witness is not qualified.

THE COURT: You still know gin and whisky, do you?

A. Yes, sir.

Q When you taste them?

A Yes, sir.

Q And you tasted those bottles?

A. Yes, sir.

Q And it was gin and whisky?

A Yes, sir.

MR. WILLIAMS: I object to that and move that the answer be stricken out as immaterial, and object

to the introduction of the testimony, on the same ground.

THE COURT: Denied.

MR. WILLIAMS: Exception.

MR. Mc GANN: Q You testified that the waiter brought you some lemon juice.

MR. WILLIAMS: Has the Government introduced these three bottles?

MR. Mc GANN: Yes.

MR. WILLIAMS: Has your Honor ruled upon their introduction?

THE COURT: Yes.

MR. WILLIAMS: I desire an exception to that ruling."

(Reporter's Transcript—Page 16, Line 10, to Page 18, Line 10.)

Without laying any foundation for the admission of said testimony, and upon the objection being made by the defendants that the evidence was not the best evidence, the defendants hereby assign the admission of said testimony in evidence, as prejudicial error for the reason that it was so highly prejudicial in its character that, in view of all the other evidence in the case, it is shown that by its admission, the jury was led to convict the defendants by reason of passion and prejudice, and not upon the legal evidence introduced at the trial of said cause, and the objections of the defendants to such questions, and their exceptions to the ruling of the Court were duly taken and allowed.

## IX.

The trial Court erred in admitting incompetent evidence to defendants' prejudice, to wit:

That the Court overruled the objections of the defendants to the testimony of plaintiff's witness, Mrs. Cory, relative to the contents of a certain bottle introduced into evidence, which was objected to upon the ground that the questions and answers thereto, called for a conclusion of the witness, and that no proper foundation had been laid therefor, which questions, objections, answers and exceptions are as follows:

"A The bottle that the gin was served in was a bottle just like this, with a White Rock label on it.

MR. WILLIAMS: I move that the word "gin" be stricken out as calling for a conclusion of the witness and no proper foundation laid.

THE COURT: Denied.

MR. WILLIAMS: Exception.

MR. Mc GANN: Q Did you examine the contents of the bottle?

A Why, I sampled it, if that is what you want to know.

Q You tasted some of it, did you?

A Yes, sir.

Q How much?

A We made up a drink of gin fizz.

Q Do you know gin when you taste it?

A I think so.

Q Do you?

A Yes, sir.

Q Would you say it was gin that you drank at that time?

A I would say so; yes, sir.

Q It was taken from this bottle?

MR. WILLIAMS: I move that all of the witness's testimony as to the contents of the bottle be stricken out as calling for a conclusion of the witness, and no proper foundation laid, your Honor.

THE COURT: Denied.

MR. WILLIAMS: Exception.

(Reporter's Transcript—Page 32, Line 20 to Page 33, Line 22)

Without laying any foundation for the admission of said testimony, and upon the objection being made by the defendants that the evidence was not the best evidence, the defendants hereby assign the admission of said testimony in evidence, as prejudicial error for the reason that it was so highly prejudicial in its character that, in view of all the other evidence in the case, it is shown that by its admission, the jury was led to convict the defendants by reason of passion and prejudice, and not upon the legal evidence introduced at the trial of said cause, and the objections of the defendants to such questions, and their exceptions to the ruling of the court were duly taken and allowed.

X.

The trial Court erred in admitting incompetent evidence, to defendants' prejudice, in this, towit:

That the Court, over the objections of the defendants permitted the plaintiff's witness, Mrs. Cory, to testify as to the contents of one of the exhibits of the

plaintiff herein, introduced into evidence, which said testimony was incompetent, irrelevant and no foundation laid, which questions, answers, objections and exceptions are as follows:

“Q I will ask you ever have seen this bottle before?

A It was served in a flask, a pint flask similar to that, and I presume that is the same bottle.

MR. WILLIAMS: I didn't hear that.

A I say, it was served in a pint flask and I presume that is the same bottle.

MR. WILLIAMS: I object to what the witness presumes as incompetent, irrelevant and immaterial, and no foundation laid.

THE COURT: Q Did it look like that bottle?

A Yes, sir; it was a plain bottle just like that.

MR. Mc GANN: Q Did you drink any of the contents out of that bottle at that time?

A I took just one drink.

Q You know that it was whiskey?

A Yes, sir, it was whisky.

Q Were you there on any other occasion?

A No, sir.

Q Did you at any time see Mr. Oliver on your visits?

A I did not.

Q Did you know Mr. Landfield, when you saw him?

A Yes, sir.

Q Is he in the court room now?

A He is sitting directly in back of his attorney.

MR. Mc GANN: Take the witness."

(Reporter's Transcript—Page 34, Line 22, to Page 35, Line 20.)

The admission of which evidence upon the objection being made that the said evidence was incompetent, irrelevant and immaterial, and no foundation laid therefor, the defendants herein assign as prejudicial error.

XI.

The trial Court erred in admitting incompetent evidence, to defendants' prejudice, in this, to wit:

That the Court overruled the objections of the defendants to the testimony of the government's witness, Ahlin, that he had purchased a bottle of Scotch Whisky from the defendant, Ellis, for the sum of Five Dollars, (\$5.00), same being out of the presence of the defendants, Landfield and Oliver, which questions, objections, answers and exceptions are as follows:

"Mr. Mc GANN: Q Just state what the conversation was, Mr. Ahlin.

A Agent Cory spoke up and said, "This is a friend of mine from San Francisco, and anything that he asks for is all right, give it to him." Landfield answered that it would be all right with him, and with that this fellow Ellis came to the table and I was introduced to him also, and I advised him that I wanted a bottle of Scotch.

MR. WILLIAMS: We object to that unless Landfield was present during the conversation with Ellis.

THE COURT: Was he there?

A He was there.

THE COURT: Don't say anything unless it took place in the presence of one of the defendants.

A Mr. Landfield was present, and a short time after that Mr. Ellis beckoned to me to come over to the little room off of the dance floor there and delivered me a pint bottle of Scotch Whisky, for which I gave him \$5.00.

Q I will ask you if you have ever seen this bottle before (handing bottle to witness)?

A I have.

Q Where?

A It was bought out there at the Glendale Tavern from Mr. Ellis.

Q Is that the bottle you bought from Mr. Ellis?

A It is.

Q Where was the defendant, Landfield, when you bought that?

A In the premises some place.

Q Was he in your immediate presence when you purchased this from Mr. Ellis?

A I was in the room by myself with Mr. Ellis.

MR. WILLIAMS: I move that all of that testimony be stricken out on behalf of the defendants Landfield and Oliver.

THE COURT: "Denied."

(Reporter's Transcript—Page 50, Line 15, to Page 51, Line 10.)

The admission of which evidence upon the objection being made that said evidence was incompetent, irrelevant and immaterial and hearsay, the defendants hereby assign as prejudicial error.



XII.

The trial Court erred in admitting incompetent evidence to defendants' prejudice, in this, towit:

That the Court permitted the government's witness, Ahlin, to testify as to the contents of a certain bottle introduced in evidence over the objection of the defendants to said testimony, as calling for a conclusion of the witness, and no foundation being laid therefor.

“Q What did you ascertain the contents of that bottle to be?

A Scotch Whisky.

MR. WILLIAMS: We object to that as immaterial and no foundation laid.

THE COURT: Do you know Scotch Whisky when you taste it?

A Yes, sir.

Q Did you taste this?

A Yes, sir.

Q Was that Scotch Whisky?

A Yes, sir.

Q It was?

A Yes, sir.

MR. WILLIAMS: I move that that be stricken out as calling for the conclusion of the witness and no foundation laid.

THE COURT: Denied.

MR. WILLIAMS: Exception.”

(Reporter's Transcript—Page 51, Line 14, to Page 52, Line 6.)

The admission of which evidence upon the objection of the defendants that said evidence was incompetent,

irrelevant and immaterial, calling for the conclusion of the witness, and no foundation laid, these defendants assign as error.

### XIII.

The trial Court erred in admitting incompetent and immaterial evidence, to defendants' prejudice, in this, to wit:

That the Court, over the objection of the defendants permitted the government's witness, Ahlin, to testify that the defendant Oliver, had sold liquor to said witness, Ahlin, in the month of October, 1924, which said evidence was objected to upon the grounds that it was immaterial and not within any of the times charged in the Information, and was at a time, subsequent in point of time, to the offenses charged in said Information, which questions, exceptions and answers and objections are as follows:

“MR. Mc GANN: Q Were you at that address at any other time?

A I was out there at a later date.

Q What date?

A Around in October some time.

Q What was the occasion of your visit?

MR. WILLIAMS: We object to any October visit on the ground that it is immaterial, and not within the time charged in this information.

THE COURT: Denied.

MR. WILLIAMS: The last date mentioned was October.

THE COURT: They are charged with maintaining a nuisance on or about the 29th day of August, and

any time either before or after that, within a reasonable degree, would be relevant.

MR. WILLIAMS: We renew our objection to the October visit on the ground that it is too far removed, too remote, and incompetent.

THE COURT: Overruled.

MR. WILLIAMS: Exception

MR. Mc GANN: Q What was the purpose of your visit?

A With Agent Bybee we visited these premises again and we then purchased liquor. This liquor was purchased by me of Oliver in the presence of Mickey Murphy, who was the main proprietor of the place at that time.

MR. WILLIAMS: I move that that all be stricken out as immaterial to the issues contained in this indictment.

THE COURT: Denied.

MR. WILLIAMS: Exception."

(Reporter's Transcript—Page 52, Line 7, to Page 53, Line 9).

The admission of which evidence, upon the objection being made by the defendants that the same was immaterial, too far removed, remote and incompetent, the defendants hereby assign as prejudicial error for the reason that it was so highly prejudicial in its character that in view of all the other evidence in the case, it is shown that by its admission, the jury was led to convict the defendants by reason of passion and prejudice and not upon the legal evidence introduced at the trial of the said cause, and the objections of the

defendants to such questions, and their exceptions to the ruling of the Court were duly taken and allowed.

#### XIV.

The trial Court erred in refusing to direct a verdict of "Not Guilty" as to the defendant, J. W. Oliver, upon each of the five counts contained in said Information, upon the close of the government's evidence and case in that the allegations contained in the five counts of the Information had not been proven as against the defendant, Oliver, and that there was not sufficient legal evidence produced by the plaintiff herein against said defendant to show that any of the offenses included in the five counts contained in the Information, charged against him, had been committed by said defendant, Oliver, which Motion and exception of defendant is as follows:

"MR. WILLIAMS: At this time, in compliance with the practice of this Court, I desire at this time to move, on behalf of the defendant J. W. Oliver, as to Count 1 of this information, that the Jury be instructed to acquit the defendant, J. W. Oliver, on the ground—

THE COURT: The motion will be denied, and it may be considered as having been made on behalf of each of the defendants as to each count of the indictment, and denied.

MR. WILLIAMS: I would like to make my motion, if the Court please.

THE COURT: I said it might be considered as made to all defendants on all counts, and denied.

MR. WILLIAMS: I desire to move also as to Count 2—

THE COURT: I said it might be considered as having been made with respect to each defendant and as to each count, and denied.

MR. WILLIAMS: That includes counts 3, count 4 and count 5?

THE COURT: Yes, and denied. Proceed.

MR. WILLIAMS: Now, on behalf of the defendant, Herman Landfield, I desire to move this Court that the Jury be instructed—

THE COURT: It has been suggested, Mr. Williams, that—

MR. WILLIAMS: Wait a minute, if the Court please; I haven't made my motion.

THE COURT: I said it might be considered as to each defendant and each count, and the motion denied.

MR. WILLIAMS: I should like the Court to know there are five counts.

THE COURT: I know there are five counts, and it may be considered as made to five counts by each defendant, and denied.

MR. WILLIAMS: For the purpose of the record—

THE COURT: So now that ought to be understood, proceed.

MR. WILLIAMS: Very well, Mr. Landfield, take the stand, please.”

(Reporter's Transcript—Page 60, Line 6, to Page 61, Line 15.)

The denial of which motion, the defendant, Oliver, hereby assigns as prejudicial error in view of the evi-

dence produced prior to the said motions upon the part of the United States.

#### XV.

The trial Court erred in refusing to direct a verdict of "Not Guilty" as to the defendant, Herman Landfield, upon each of the five counts contained in said Information, upon the close of the governments' evidence and case, in that the allegations contained in the five counts of the Information had not been proven as against the defendant, Landfield, and that there was not sufficient legal evidence produced by the plaintiff herein against said defendant to show that any of the offenses included in the five counts contained in the Information, charged against him, had been committed by said defendant, Landfield, which Motion and exception of defendant is as follows:

(Reporter's Transcript—same as in preceding specification *or* Error.)

#### XVI.

The trial Court erred in that the Court interrogated the defendant, Landfield, and directed certain questions to said defendant, Landfield, over the objection of the said defendants, which said questions were improper and *arumentative*, called for a conclusion of the witness and were prejudicial to the defendants in that the Court, by said questions, placed the said Landfield in such a position that to answer the said questions, the said Landfield was compelled to accuse the government agents of having committed a deliberate falsehood, which questions, answers, objections and exceptions are as follows:

“Q All of these statements of these witnesses have made that they bought liquor there at your place from you or through you is all false?

A Absolutely, your Honor.

Q They have just come here and told a deliberate falshood?

MR. WILLIAMS: We will have to object to that question, Your Honor, on the ground that it is argumentative.

THE COURT: Overruled.

MR. WILLIAMS: Exception.

THE COURT: Q That is a fact, is it not?

A Yes, sir.”

(Reporter’s Transcript—Page 72, Line 15, to Page 72, Line 26.)

The asking of which questions, and upon the objections being made that the same was argumentative, the defendants hereby assign as prejudicial error.

#### XVII.

The trial Court erred in refusing to direct a verdict of “Not Guilty” upon each count of the Indictment as to the defendant, Herman Landfield, and as to the defendant, J. W. Oliver, at the close of all the evidence, in this, towit:

That the five counts contained in the Information as against each defendant, had not been proven against these defendants, and that no evidence had been introduced as against the defendant, Landfield or as against the defendant, Oliver, upon each or any of the counts contained in the Information to prove the

commission of said offenses contained in each of said counts.

“MR. WILLIAMS: The defendants rest, with this exception: I desire at this time to renew my motions.

THE COURT: Denied.

MR. WILLIAMS: Just a moment. I haven't made my motions.

THE COURT: It may be considered as having been made and denied.

MR. WILLIAMS: For the purpose of the record I desire to make the motion on behalf of the Defendants Landfield and Oliver.

THE COURT: It may be considered as having been made to each defendant on each count, the motion to dismiss on each count, and it is denied. Proceed.

MR. WILLIAMS: I desire to make my motion, if the Court pleases.

THE COURT: It may be regarded as having been made to each count and as to each defendant, and denied.

MR. WILLIAMS: Exception. On Count 3 there is no testimony to substantiate that count, and I move that that be dismissed.

THE COURT: Denied.

MR. WILLIAMS: I don't want to have any argument.

THE COURT: Any Rebuttal?

MR. Mc GANN: No rebuttal.

THE COURT: How much time do you want for argument?



MR. Mc GANN: It will only take a few moments for argument.

MR. WILLIAMS: I would suggest, your Honor, that I can present this matter in 30 minutes.

THE COURT: Oh, 15 minutes will be ample.

MR. WILLIAMS: I at this time request that I should be given 30 minutes.

THE COURT: Denied.

MR. WILLIAMS: Exception.

(Reporter's Transcript—Page 75, Line 3, to Page 76, Line 10.)

The denials of which motions, the defendants herein assign as prejudicial error in view of the evidence produced prior to said motions upon the part of both the United States and the defendants, Landfield and Oliver.

### XVIII.

The trial Court erred in the charge to the Jury, to the defendants' prejudice, in this, towit:

That the trial Court gave the following instruction to the Jury, to the giving of which instruction, the exception of the defendants was duly taken and allowed, which instruction is erroneous as a statement of the law upon the ground that the Jury was instructed that the testimony of the defendant, Landfield, was to be adjudged not in accordance with the same rules given in respect to other witnesses, which instruction is as follows:

“Now, in this case the defendant Landfield has offered himself as a witness in this case. That is his

right, and you are to hear his testimony in accordance with the same rules I have given you with respect to other witnesses in the case, but with this additional effect, which is personal to him: That you are to hear his testimony in the light of the fact that he is a defendant in the case and in the light of the fact of his interest in the outcome of the case, but you are not entitled to disregard the testimony of a witness because such witness is a defendant. There would be no justice in that. But you are to hear the testimony of the defendant in the light of the fact that he is a defendant and is interested in the case in consequence of that fact.”

(Reporter’s Transcript—Page 81, Line 14, to Page 82, Line 1.)

“MR. WILLIAMS: On behalf of the defendants, I desire to note an exception to your Honor’s charge, and the whole thereof, and in particular to the charge as to the Court’s duty in commenting on the evidence; also I desire to note an exception to your Honor’s charge as to the impeachment of witnesses; I also desire to note an exception to your Honor’s charge on the interest of the defendant, Landfield. I also desire to note an exception to your Honor’s charge and comment on principal and accessory, aider and abetter. I also desire to note an exception as to the defendant, Oliver. I also desire to note an exception to the instruction and comment on the possession of the liquor. I also desire to note an exception to the comment and instruction as to the alcoholic content of the alleged liquor. I also desire to note an exception to the com-

ment and instruction as to the testimony of the Government officers. I also desire on behalf of the defendants to note an exception to the failure of the Court to give the instructions requested by the defendants.”

(Reporter’s Transcript—Page 93, Line 26, to Page 94, Line 18.)

### XIX.

That the trial Court erred in the charge to the Jury to the defendants’ prejudice, to-wit:

That the trial Court gave the following instruction to the Jury, to the giving of which instruction, the exceptions of the defendants were duly taken and allowed, which instruction is contrary to law in that the Jury were instructed that if they had abiding conviction and belief that the defendants were guilty, it was their duty to convict, without stating that the conviction and belief would have to be to a moral certainty, which instruction is as follows:

“When, however, weighing all of the evidence, you have an abiding conviction and belief that the defendant is guilty, it is your duty to convict, and no sympathy, sympathy for him or for his family, if he have one, or for his plight, or anything of that sort, justifies you in seeking for doubts by any strained or unreasonable construction or interpretation of the law or evidence or facts.”

(Reporter’s Transcript—Page 86, Line 3, to Page 86, Line 10.)

(Exception taken same as in Assignment XVIII.)

## XX.

The trial Court erred in the charge to the jury, to the defendants' prejudice, in this, to wit:

That the trial Court gave the following instruction, to the giving of which instruction, the exception of the defendants was duly taken and allowed, which instruction is not a correct statement of the law, and which instruction reads as follows:

"Now, it is also the law, gentlemen, relevant to the matters to be submitted to you, that whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, induces, or procures its commission, is a principal and is to be prosecuted and punished just exactly as the principal is. That means that while it may be true that one man himself does the thing which the law denominates may not be done: one man sells the liquor, one man goes and gets the liquor, or one man does something else to bring about the transaction which is forbidden by the law, and another man aids, abets, counsels, commands induces or procures the commission of the crime and knowingly helps to contribute to its success, then he is just as guilty as the other man, because it cannot be said that one man handles the money and the other gets the liquor and that he can, for that reason, be the only one that is guilty. As I have indicated to you, whoever aids, abets, commands, induces or procures the doing of that thing is just as responsible and is just as much subject to prosecution and punishment as the one who commits the offense."

(Reporter's Transcript—Page 86, Line 11, to Page 87, Line 6.)

(Exception taken same as in Assignment XVIII.)

XXI.

That the trial Court erred in the charge to the Jury to the defendants' prejudice, in this, towit:

That the trial Court gave the following instruction to the giving of which instruction the exceptions of the defendants were duly taken and allowed, which instruction is erroneous in law in these particulars:

1st. That the Court instructed the Jury that there was evidence in the case as to all the counts, with the exception of the third count.

2nd. That the Jury was instructed that the defendant, Landfield, was apparently in charge in some capacity aiding, abetting and co-operating and making it possible for the liquor to be purchased.

3rd. That the Jury was instructed that some of the witnesses had testified that the defendant, Oliver, cooperated and collaborated and knew what was going on, and contributed to it, all of which there was no testimony, or concerning which no evidence had been introduced,

Which instruction was excepted to, and is as follows:

“Now, so much, gentlemen, as to the law involved in the case, just a word or two as to the facts: These defendants are charged in three counts with having sold liquor, and one count with having possession of liquor, and in the remaining count of having maintained a nuisance. Now, it is true as to the third count, as I remember the evidence, there is not any

evidence of a sale of liquor under and pursuant to the terms of that count, so, as to that count, I think it is your plain duty to return a verdict of not guilty. There is no evidence as to the matters charged in that count. Now, there is evidence in the case—the weight or the sufficiency of which it is for you, of *cour*—as to the other remaining counts, and it is your duty to determine the guilt or innocence of the defendants in respect to them also. Now, if you believe the testimony of the Government agents who went out to this place, as they say, and, as they say, made purchases of liquor there at that place, and that the defendant Landfield, who was apparently in charge in some capacity, aiding, abetting and cooperating and making it possible for the liquor to be purchased, if you believe that, and believe it beyond a reasonable doubt, that it is a fact, why, of course, he is just as responsible as if he himself had produced the liquor and sold the liquor and taken the money, carried the liquor and did everything about it; and if the defendant Oliver, as testified by some of the witnesses, cooperated, *colaborated* with that and knew what was going on, and contributed to it, aided and abetted in so far as he did, why, he would be guilty, of course, of the thing with respect to which he did cooperate and *colaborate*, remembering, of course, that the guilt of a person has to be determined by what that person does and not by what some other person does or says.”

(Reporter's Transcript—Page 88, Line 14, to Page 89, Line 20.)

(Exception same as in Assignment 18.)

## XXII.

That the trial Court erred in the charge to the Jury to the defendants' prejudice, in this, towit:

That the trial Court gave the following instruction to the Jury, which said instruction is not a correct statement of the law of possession of intoxicating liquors, in this, that the Jury were instructed that if possession of liquor was in the custody and control of persons other than these defendants, at the defendants' said place of business, with knowledge thereof by the defendants, that the defendants could be found guilty of the possession thereof, to the giving of which instruction the exception of the defendants was duly taken and allowed, which instruction is as follows:

“Then with respect to the counts charging possession: There is testimony that the officers went out there on this night of the so-called raid, and they found these three quarts of liquor. If, under all of the circumstances of the case, you believe that liquor was being sold there by these defendants, as testified to by the officers who went there on this occasion, and if you believe from all the circumstances presented in the evidence that the people who had liquor there were people who had bought liquor, as the officers have testified, they bought it previously, and the defendants knew that, then, of course, they would be responsible for the liquor on the premises and should be found guilty as charged, if you believe that beyond a reasonable doubt. By the same token, if you believe that these defendants, either or both of them, cooperating together or acting independently were maintain-

ing that place out there as it has been admitted by somebody in the evidence, that it was a high class restaurant, if you believe it was maintained and the persons maintaining it, either in the position of waiter or manager or otherwise, were maintaining it as a place where liquor could be kept and sold, of course, it would be maintained and kept in violation of law and the maintaining of the place would be a common nuisance and you should find the persons maintaining that place guilty as charged, if you believe that was the fact beyond a reasonable doubt."

(Reporter's Transcript—Page 89, Line 21, to Page 90, Line 20.)

(Exception same as in Assignment XVIII.)

### XXIII.

That the trial Court erred in the charge to the Jury, to the defendants' prejudice in this, to wit:

That the trial Court gave the following instruction to the Jury, which the defendants contend is erroneous for two reasons:

First: That the Jury was instructed as a matter of law that the evidence introduced in behalf of the government contained more than one-half of one per cent of alcohol, although without any proof thereof having been produced by the government.

Second: That the said instruction was erroneous in that the Jury was told by said instruction that it was incumbent upon them to find the defendants guilty, or else to find that the officers of the government had deliberately perjured themselves, to the giving of which



instruction the exception of the defendants was duly given and allowed, which instruction is as follows:

“There has been some slight suggestion—I say slight suggestion, it was rather lengthily elaborated upon, to the effect that you don’t know whether the stuff in these bottles contains more than one-half of one per cent of alcohol by volume. I think it hardly worth the time of the Court to elaborate upon that. It could easily be true that somebody might have difficulty in saying what near beer or beer or some other similar substance might or might not contain one-half of one per cent or more of alcohol, or thereabouts, but it would hardly seem that anybody with any experience at all, anybody that was not born day before yesterday, could not tell what gin and whisky is. That is what the testimony is, that gin and whisky was purchased. So, gentlemen, don’t let your minds be diverted by any unsubstantial, specious argument like that. It is for you to say what the facts are, what the proof is, and you cannot convict the defendants if you do not believe they sold these things containing more than one-half of one percent of alcohol. If they did sell it, it would be hardly reasonable to conclude that they were selling something that contained less than one-half of one percent of alcohol; it would hardly be reasonable to believe that an article of that kind was sold for \$5.00 and \$7.00 a bottle, if you find it was sold for that, so the whole thing, after you simmer it down, depends upon whether you believe these officers or agents or the defendants. The defendant Landfield says that the officers—the testimony

given by the officers was an out and out falsehood, plain perjury. That is the case if his story is to be accepted that he didn't know of the sales being made and didn't participate in the sales. Then these officers have come here and deliberately perjured themselves, because there cannot be any question under the circumstances but that they went there on these occasions and that they there met and talked with the defendant. No doubt about that. It is hardly a case of mistaken identity or mistaken location. So it is just a question of what you are going to conclude. Are you going to conclude that these officers have come here and deliberately perjured themselves, or are you going to conclude that the defendant, for the purpose of removing the consequences of his own wrong doing, if he did do wrong, has testified falsely in order to escape the consequences. Both of them cannot be telling the truth. You have to determine one way or the other as to where the truth lies. You have to come to a conclusion that will be fair under all of the circumstance, free from passion, free from prejudice, giving the thing the calm, deliberate, careful and close consideration that it requires at your hands, and that it is your duty to give it, remembering that if you have a reasonable doubt of the guilt of the defendants, of course you should acquit them, but if you believe beyond a reasonable doubt that they have conducted themselves as alleged, either of them, it is your plain duty to convict them. Any exceptions to the charge?"

(Reporter's Transcript—Page 91, Line 22, to Page 93, Line 25.)

XXIV.

The Court erred in refusing to give to the Jury the following instructions requested by the defendants, to which refusal, the defendants objected and excepted.

“The law presumes each defendant to be of good character, and it is your duty to do likewise, and you must not draw any presumption against these defendants that you would not against any other persons of good character charged with a like offense.

DEFENDANTS’ INSTRUCTION NO. 2.

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Judge.”

“The fact that the defendants, Landfield or Oliver, were friendly, or even intimately friendly with the defendant, Ellis, is not a circumstance in itself to be considered against them, neither is it sufficient to show that these defendants were involved with the said Ellis in the commission of said offense, if any was committed, but the prosecution must connect the defendants, Landfield and Oliver in some way with the commission of the alleged offense and no presumption is to be indulged in against them because the evidence may point to the guilt of the co-defendant, Ellis.

DEFENDANTS’ INSTRUCTION NO. 3.

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Judge.”

“For one person to abet another person in the commission of a criminal offense, means for him to knowingly and with criminal intent, aid, promote, encour-

age or instigate, by act or counsel, or both by act and counsel, the commission of such criminal offense.

DEFENDANTS' INSTRUCTION NO. 15.

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Judge."

"Each defendant herein is charged under one Count of this Information with knowingly, wilfully, and unlawfully maintaining a building and place where intoxicating liquors, for *berage* purposes, were kept, sold, and bartered in violation of law, and you are instructed that it is incumbent upon the government to prove that the liquors were so kept by the defendants in said building, charged in the information, for the purposes charged therein, and it is not sufficient for the government to show that certain intoxicants were found in the said building in the possession of others, but they must go further and show that the defendants had said intoxicants, if any, in their possession or control, or that they were there with the knowledge of defendants or either of them.

DEFENDANTS' INSTRUCTION NO. 18

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Judge."

(Exception taken same as in Assignment XVIII Reporter's Transcript—Page 93 Line 26 to Page 94, line 18)

XXV.

The Court erred in rendering its Judgment in this case against the defendants for the reason that the evidence introduced against the defendants in this case

was not sufficient to justify the verdict of the Jury therein or the Judgment of the Court against the defendants.

XXVI.

The Court erred in rendering its Judgment in this cause against the defendants for the reason that the testimony did not show, or tend to show, that either of the defendants herein had committed any offenses or offenses set out in the Information.

XXVII.

The Court erred in rendering its Judgment in this cause against these defendants for the reason that the testimony introduced at the trial of said cause did not tend to connect the defendant, Oliver, with the commission of any offenses in any or all the counts set forth in the Information.

XXVIII.

That the Court erred as a matter of law in denying the defendants' motion for a New Trial, upon the grounds that the evidence introduced in said cause did not tend to show the commission of the offenses set forth in the Information against either of the defendants, Landfield or Oliver, to which ruling the exception of the said defendants was duly taken and allowed.

DATED: This 4th day of March, 1925.

Warren L. Williams

Seymour S. Silverton

Attorneys for Defendants, Landfield and Oliver.

And upon the foregoing Assignment of Errors, and upon the record in said cause, defendants pray that the Verdict and Judgment rendered therein may be reversed.

DATED: This 4th day of March, 1925.

Warren L Williams

Seymour S Silverton

Attorneys for Defendants, Landfield and Oliver.

We hereby certify that the foregoing Assignment of Errors are made in behalf of the petitioners, Herman Landfield and J. W. Oliver, for a Writ of Error, and are, in our opinion, and the same now constitute the Assignment of Errors upon the Writ prayed for.

Warren L. Williams

Seymour S Silverton

Attorneys for Defendants, Landfield and Oliver.

[ENDORSED]: ORIGINAL. No 6793-B Criminal IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION. THE UNITED STATES OF AMERICA Plaintiff -vs- HERMAN LANDFIELD, J. W. OLIVER and JOHN DOE ELLIS, Defendants. ASSIGNMENT OF ERRORS ON BEHALF OF LANDFIELD and OLIVER, DEFENDANTS HEREIN. Received copy of the within Assignment of Errors, this 5th day of March, 1925. S. W. McNabb U. S. attorney By Eugene T. McGann Spec. Asst U. S. Atty. Attorney for Pltf FILED MAR 6 1925 CHAS. N. WILLIAMS, Clerk G F Gibson Deputy WARREN L. WILLIAMS S. S. SILVERTON 419 Ferguson Bldg. 307 So. Hill Street Los Angeles, Cal. Bdwy. 7881 Bdwy. 7880 Attorneys for Defendants, Landfield and Oliver

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

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THE UNITED STATES ) No. 6793-B Crim.  
OF AMERICA, )  
-vs- Plaintiff, )  
) PETITION FOR A  
HERMAN LANDFIELD, )  
J. W. OLIVER and JOHN ) WRIT OF ERROR.  
DOE ELLIS, )  
Defendants.)

Your petitioners, HERMAN LANDFIELD and J. W. OLIVER, defendants in the above entitled cause, bring this, their Petition and the Petition of each of them, for a Writ of Error to the District Court of the United States, in and for the Southern District of California; and in that behalf your petitioner, Herman Landfield says, That on the 25th day of February 1925, there was made, given and rendered in the above entitled Court and cause, a Judgment against your petitioner, Herman Landfield, whereby your petitioner was adjudged and sentenced upon the first Count in the Information in the above entitled cause, to serve a term of six (6) months in the Orange County Jail, in the County of Orange, State of California, to serve a term of six (6) months in the Orange County Jail, in the County of Orange, State of California upon the second Count in the said Information in the above entitled action, and to pay a fine of One Dollar, (\$1.00) upon the fourth Count in said

Information in the above entitled cause contained, and upon the fifth Count of said Information filed in the above entitled cause, your petitioner herein, Herman Landfield, was sentenced to serve a term of one (1) year in the Orange County Jail, Orange County, California, and to pay a fine of One Thousand Dollars, (\$1,000.00), said petitioner to be committed until the payment of said fines, the said Judgment against your petitioner herein upon the first, second and fifth Counts, as far as the same relate to imprisonment, to be served concurrently; and that at said time and place aforesaid, there was made, given and rendered in the above entitled Court and cause, a Judgment against the petitioner, J. W. Oliver, whereby said petitioner was adjudged and sentenced upon the fourth Count of said Information in the above entitled cause, to pay a fine of One Dollar, (\$1.00) and to be committed until said fine was paid, and upon the fifth Count in said Information contained, to be confined in the Orange County Jail, in the County of Orange, State of California, and to serve a term therein of six (6) months, and each of your petitioners say that he is advised by his counsel, and avers that there was and is manifest error in the records and proceedings had in said cause, and in the making, giving and entering of said Judgment and Sentence aforesaid against each of your petitioners herein, to the great injury and damage of your petitioners and each of them, and each and all of these errors will be more fully made to appear by an examination of said records and by an examination of the Bill of Exceptions to be here-



after by your petitioners, tendered and filed, and the Assignment of Errors which is filed with his Petition, and to that end, that sentence and proceedings may be reviewed by the United States Circuit Court of Appeals, for the Ninth Circuit, and your petitioners pray that a Writ of Error may be issued directed therefrom to the said District Court of the United States for the Southern District of California, Southern Division, returnable according to law and the practice of the Court, and that there may be directed to be returned, pursuant thereto, a true copy of the record, Bill of Exceptions, Assignment of Errors, and all proceedings had and to be had in said cause, and that the same may be removed unto the United States Circuit Court of Appeals for the Ninth Circuit, to the end that the error, if any has happened, may be duly corrected, and full and speedy justice done your petitioners.

And your petitioners make the Assignment of Errors filed herewith, upon which they will rely, and will be made to appear by a return of the said record in obedience to said Writ.

WHEREFORE, your petitioner prays the issuance of a Writ as herein prayed, and that the Assignment of Errors filed herewith may be considered as their assignment upon the Writ, and that the Judgment rendered in this cause may be reversed and held for naught, as to each of the petitioners herein, and that said cause be remanded for further proceedings, and

that each of these petitioners be awarded a Supersedeas upon said Judgment, and all necessary process including bail.

Herman Landfield

J W Oliver

Petitioners.

Warren L. Williams

Seymour S Silverton

Attorneys for Defendant.

[ENDORSED]: ORIGINAL No. 6793-B Crim. IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION. THE UNITED STATES OF AMERICA, Plaintiff -vs- HERMAN LANDFIELD, J. W. OLIVER and JOHN DOE ELLIS, Defendants. PETITION FOR A WRIT OF ERROR Rec'd copy of the within Petition for a Writ of Error this 5th day of March, 1925 S. W. McNabb U. S. Atty By Eugene T. McGann Spec. Asst U. S. Atty Attorney for Pltf. FILED MAR 6 1925 CHAS. N. WILLIAMS Clerk G F Gibson Deputy. WARREN L. WILLIAMS S. S. SILVERTON 419 Ferguson Bldg. 307 So. Hill Street LOS ANGELES, CAL. Bdwy. 7881 Bdwy. 7880 Attorneys for Defendants, Landfield and Oliver

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

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THE UNITED STATES OF )	No. 6793-B	Crim.
AMERICA, )		
-vs- )	Plaintiff, )	ORDER ALLOWING
HERMAN LANDFIELD, )		WRIT OF ERROR.
J. W. OLIVER and JOHN )		
DOE ELLIS, )		
Defendants. )		

Upon Motion of WARREN L. WILLIAMS and SEYMOUR S. SILVERTON, ESQS., Attorneys for the defendants, HERMAN LANDFIELD and J. W. OLIVER, and upon filing the Petition for a Writ of Error and Assignment of Errors herein, it is

ORDERED, that a Writ of Error be, and hereby is, allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, the verdict and judgment heretofore made and entered herein; that pending the decision upon said Writ of Error, the Supersedeas prayed for by the defendant, in his petition for a Writ of Error herein, is hereby allowed; the defendant, Herman Landfield is admitted to bail upon said Writ of Error in the sum of \$10,000.00 and the defendant, J. W. Oliver, is admitted to bail upon said Writ of Error in the sum of \$5,000.00.

DATED: This 5 day of March, 1925, at Los Angeles, California.

Bledsoe

Judge of the United States District Court.

[ENDORSED]: ORIGINAL No. 6793-B Crim  
 IN THE DISTRICT COURT OF THE U. S. IN  
 AND FOR THE SOUTHERN DISTRICT OF  
 CALIFORNIA SOUTHERN DIVISION THE U. S.  
 OF AMERICA Plaintiff vs. HERMAN LAND-  
 FIELD, J. W. OLIVER Defendant ORDER AL-  
 LOWING WRIT OF ERROR. FILED MAR 6  
 1925 CHAS N WILLIAMS, Clerk G. F. Gibson  
 Deputy. WARREN L. WILLIAMS SEYMOUR S.  
 SILVERTON 419 Ferguson Building 307 So. Hill  
 Street LOS ANGELES, CAL. Bdwy. 7881 Attor-  
 neys for Defendants, Landfield and Oliver

IN THE DISTRICT COURT OF THE UNITED  
 STATES, IN AND FOR THE SOUTHERN  
 DISTRICT OF CALIFORNIA,  
 SOUTHERN DIVISION.

THE UNITED STATES OF )	
AMERICA, )	
Plaintiff )	
-vs- )	No. 6793-B Crim.
HERMAN LANDFIELD, )	
J. W. OLIVER and JOHN )	
DOE ELLIS, )	SUPERSEDEAS
Defendants. )	ORDER.

The defendants herein having heretofore petitioned the above entitled Court for a Writ of Error, to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, the verdict and judgment

heretofore made and entered herein, and the above entitled Court upon the 5th day of March, 1925, having allowed the said Writ and fixed bail of the defendant herein, Herman Landfield, upon said Writ at the sum of \$10,000.00, and the defendant, J. W. Oliver, upon said Writ of Error at the sum of \$5000.00, and said Writ having been filed on the 6th day of March, 1925.

IT IS ORDERED, that the same shall operate as a Supersedeas, and the Clerk is hereby directed to stay the Mandate of the District Court of the Southern District of California, Southern Division, and that no further proceedings shall be had in this cause in this Court until the final determination thereof in the said United States Circuit Court of Appeals upon the filing and approval by the Court of a bond in the penal sum of \$10,000.00 with surety thereon for defendant, Herman Landfield and a Bond in the penal sum of \$5000.00 with surety *theren* for defendant J. W. Oliver.

Bledsoe

Judge of the United States District Court,  
Southern District of California, Southern  
Division.

[ENDORSED]: ORIGINAL No. 6793-B Crim.  
IN THE DISTRICT COURT OF THE U. S.  
IN AND FOR THE SOUTHERN DISTRICT  
OF CALIFORNIA SOUTHERN DIVISION THE  
UNITED STATES OF AMERICA Plaintiff vs.  
HERMAN LANDFIELD, J. W. OLIVER and JOHN  
DOE ELLIS Defendant SUPERSEDEAS ORDER.

FILED MAR 6 1925 CHAS. N. WILLIAMS, Clerk  
 G. F. Gibson, Deputy WARREN L. WILLIAMS  
 SEYMOUR S. SILVERTON 419 Ferguson Building  
 307 So. Hill Street LOS ANGELES, CAL. Bdwy.  
 7881 Attorneys for Defendants Landfield and Oliver

IN THE DISTRICT COURT OF THE UNITED  
 STATES, IN AND FOR THE SOUTHERN  
 DISTRICT OF CALIFORNIA,  
 SOUTHERN DIVISION.

THE UNITED STATES	)	
OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	#6793 B
	)	
vs.	)	
HERMAN LANDFIELD,	)	BOND PENDING
J. W. OLIVER, JOHN	)	DECISION UPON
DOE ELLIS,	)	WRIT OF ERROR.
Defendants.	)	
	)	

KNOW ALL MEN BY THESE PRESENTS, that we, Herman Landfield, of the County of Los Angeles, State of California, as principal, and Pearl Johnson and Berenice Jones, as sureties, are jointly and severally held and formally bound to the United States of America, to the full and just sum of Ten Thousand Two Hundred Fifty Dollars (\$10,250.00) to be paid to the said United States of America, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 16th day of March, 1925 .

Herman Landfield

Pearl Johnson

Berenice Jones

WHEREAS lately, at a Term of the District Court of the United States, Southern District of California, Southern Division, in a suit pending in said Court, between the United States of America, plaintiff and Herman Landfield, defendant, a judgment and sentence were made, given and rendered against said Herman Landfield, and the said Herman Landfield, having obtained a Writ of Error from the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment and sentence in the aforesaid suit, and a Citation directed to the said United States of America to be and appear in the United States of America, citing and admonishing the United States of America to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, California, pursuant to the terms and at the time fixed, in the said citation, which said citation has been duly served and filed, and

WHEREAS, the said Herman Landfield has been admitted to bail, pending decision upon said Writ of error in the sum of Ten Thousand two hundred fifty dollars (\$10,250.00) and the said sureties on this Bond agree and promise that the said Herman Landfield will pay all costs which may be awarded against him on said Writ of Error or on a dismissal thereof, not exceeding the amount of Two Hundred fifty

(\$250.00) dollars, to which amount we acknowledge ourselves jointly and severally bound,

NOW THEREFORE, the condition of the above obligation is such that if the said Herman Landfield, shall appear, either in person or by his attorney in the United States Circuit Court of Appeals for the Ninth Circuit, on such day or days, as may be appointed for the hearing of said cause in said Court, and prosecute his Writ of Error, and if the said Herman Landfield, shall abide by and obey all orders made by the United Circuit Court of Appeals for the Ninth Circuit; and if the said Herman Landfield, shall appear for trial in the District Court of the United States for the Southern District of California, Southern Division, on such day or days, as may be *appointe* for the re-trial by said District Court, if the judgment and sentence against him be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, and if the said Herman Landfield, shall surrender himself in execution of the judgment and sentence aforesaid, if the said judgment and sentence against him be affirmed by the said Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void, upon payment by said Herman Landfield of all or any costs adjudged against him; otherwise, to remain in full force, virtue and effect.

Herman Landfield

972 W. 43rd Place

Principal.

Pearl Johnson

Surety

Berenice Jones

Surety

Signed, sealed and acknowledged this 16th day of March, 1925.



UNITED STATES OF AMERICA, )  
STATE OF CALIFORNIA, ) ss  
COUNTY OF LOS ANGELES )

Pearl Johnson and Berenice Jones sureties in the within undertaking, being duly sworn, say, each for himself and not one for the other that he is worth the sum specified in the said Undertaking over and above all his just debts and liabilities (exclusive of property exempt from execution) and that he is a resident of the State of California and freeholder therein.

Pearl Johnson

Berenice Jones

Subscribed and sworn to before me this 16th day of March, 1925

Raymond I. Turney (Seal)

United States Commissioner.

I hereby approve the form of the within bond and the sufficiency of the sureties thereon.

Raymond I. Turney (Seal)

United States Commissioner

March 16, 1925.

I have examined the Sureties to the within Bond and said Bond is hereby approved and allowed in the amount therein.

A. (1) Lot 62 on the Pardee tract per maps recorded in Book 5—page 23 of maps in office of the County Recorder of said County.

(2) Lot 42 of Shorb and Compton Ave. Blvd. tract—Recorded in Book 8, Page 125 of Maps of Los Angeles, State of California.

(3) Lot 42-43-44-45- of Elcoat tract. County of Los Angeles, State of California. Value \$12,000 clear.

B. (1) South east  $\frac{1}{4}$  - N. E.  $\frac{1}{4}$  Section 10 lots 2 and 3 S. W.  $\frac{1}{4}$  - of N. E.  $\frac{1}{4}$  - S. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  - N. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{2}$  - of the W.  $\frac{1}{2}$  W.  $\frac{1}{2}$  of the N. W.  $\frac{1}{4}$  of Sec. 11 - Township 10 North - Range 28 West - San *Barnadino* Meridian. Value \$60,000, clear.

[ENDORSED]: ORIGINAL IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION THE UNITED STATES OF AMERICA Plaintiff, vs. HERMAN LANDFIELD, J. W. OLIVER, JOHN DOE ELLIS, DEFENDANTS. BOND OF DEFENDANT, LANDFIELD PENDING DECISION UPON WRIT OF ERROR. Approved Bledsoe U. S. District Judge FILED MAR 16 1925 CHAS. N. WILLIAMS, Clerk G. F. Gibson Deputy

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

THE UNITED STATES )  
OF AMERICA,

Plaintiff, )

#6793 B

vs. )

BOND PENDING  
DECISION UPON

HERMAN LANDFIELD, )

WRIT OF ERROR.

J. W. OLIVER, JOHN )

DOE ELLIS, )

Defendants. )

KNOW ALL MEN BY THESE PRESENTS, that we, J. W. Oliver of the County of Los Angeles, State

of California, as principal, and Pearl Johnson, AND Berenice Jones as sureties, are jointly and severally held and formally bound to the United States of America to the full and just sum of Five Thousand two hundred fifty dollars (\$5,250.00) to be paid to the said United States of America, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 16th day of March, 1925.

J. W. Oliver  
Pearl Johnson  
Berenice Jones

WHEREAS lately, at a term of the District Court of the United States, Southern District of California, Southern Division, in a suit pending in said Court, between the United States of America, plaintiff and J. W. Oliver, defendant, a judgment and sentence were made, given and rendered against said J. W. Oliver, and the said J. W. Oliver, having obtained a Writ of Error from the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment and sentence in the aforesaid suit, and a Citation directed to the said United States of America, to be and appear in the United States of America, citing and admonishing the United States of America to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, California, pursuant to the terms, and at

the time fixed, in the said citation, which said citation has been duly served and filed, and

WHEREAS, the said J. W. Oliver, has been admitted to bail, pending decision upon said Writ of error in the sum of Five Thousand two hundred fifty dollars (\$5,250.00) and the said sureties on this Bond agree and promise that the said J. W. Oliver will pay all costs which may be awarded against him on said Writ of Error or on a dismissal thereof, not exceeding the amount of two hundred fifty (\$250.00) dollars, to which amount we acknowledge ourselves jointly and severally bound,

NOW THEREFORE, the condition of the above obligation is such that if the said J. W. Oliver, shall appear, either in person or by his attorney in the United States Circuit Court of Appeals for the Ninth Circuit, on such day or days, as may be appointed for the hearing of said cause in said Court, and prosecute his Writ of Error, and if the said J. W. Oliver, shall abide by and obey all orders made by the United Circuit Court of Appeals for the Ninth Circuit; and if the said J. W. Oliver, shall appear for trial in the District Court of the United States for the Southern District of California, Southern Division, on such day or days, as may be *appointe* for the re-trial by said District Court, if the judgment and sentence against him be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, and if the said J. W. Oliver, shall surrender himself in execution of the judgment and sentence aforesaid, if

the said judgment and sentence against him be affirmed by the said Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void, upon payment by said J. W. Oliver of all or any costs adjudged against him; otherwise, to remain in full force, virtue and effect.

J. W. Oliver  
206 W. 89 St.  
Principal  
Pearl Johnson  
Surety  
Berenice Jones  
Surety

Signed, sealed and acknowledged this 16th day of March, 1925.

UNITED STATES OF AMERICA, )  
STATE OF CALIFORNIA, ) ss  
COUNTY OF LOS ANGELES )

Pearl Johnson and Berenice Jones, sureties in the within undertaking, being duly sworn, say, each for himself, and not one for the other that he is worth the sum specified in the said Undertaking over and above all his just debts and liabilities (exclusive of property exempt from execution) and that he is a resident of the State of California and a freeholder therein.

Pearl Johnson  
Berenice Jones

Subscribed and sworn to before me this 16th day of March, 1925

Raymond I. Turney (Seal)  
United States Commissioner

I hereby approve the form of the within bond and the sufficiency of the sureties thereon.

Raymond L. Turney (Seal)  
United States Commissioner.

March 16, 1925.

I have examined the sureties to the within Bond and said Bond is hereby approved and allowed in the amount therein.

A.

(1) Lot 62 on the Pardee tract per Maps recorded in Book 5, page 23 of maps in the office of the County Recorder of said County.

(2) Lot 42 of Shorb and Compton Ave., Blvd. Tract - Recorded in Book 8, page 124 of Maps of Los Angeles, State of California. (3) Lots 42-43-44-45 of Elcoat tract, Los Angeles County State of Cal. Value \$12,000, clear.

B.

Southeast  $\frac{1}{4}$  - N. E.  $\frac{1}{4}$  Section 10 Lots 2 and 3 S. W.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  - S. E.  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  - N. E.  $\frac{1}{4}$  of S. W.  $\frac{1}{4}$  of the West  $\frac{1}{2}$  half - W.  $\frac{1}{2}$  of the N. W.  $\frac{1}{4}$  of Sec. 11 - Township 10 North - Range 28 West San *Barnadino* Meridian

Value \$60,000, clear

[ENDORSED]: ORIGINAL IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA,

SOUTHERN DIVISION THE UNITED STATES  
 OF AMERICA, Plaintiff, vs. HERMAN LAND-  
 FIELD, J. W. OLIVER, JOHN DOE ELLIS, De-  
 fendants. BOND OF DEFENDANT, OLIVER,  
 PENDING DECISION UPON WRIT OF ERROR.  
 Approved Bledsoe U. S. District Judge FILED  
 MAR 16 1925 CHAS. N. WILLIAMS, Clerk G. F.  
 Gibson Deputy

IN THE DISTRICT COURT OF THE UNITED  
 STATES, IN AND FOR THE SOUTHERN  
 DISTRICT OF CALIFORNIA,  
 SOUTHERN DIVISION.

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THE UNITED STATES  
 OF AMERICA, )

#6793 B

Plaintiff, )

vs. )

SECOND AMENDED  
 PRAECIPE. )

HERMAN LANDFIELD,  
 J. W. OLIVER, JOHN )  
 DOE ELLIS,  
 Defendants. )

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TO THE CLERK OF SAID COURT:

SIR:

Please issue a certified transcript of the following  
 matters and documents or copies thereof, in the above  
 entitled cause, including endorsements upon Writ of  
 Error to the United States District Court for the

Southern District of California, Southern Division,  
to-wit:

1. Information
2. Arraignment and plea of defendants, Landfield and Oliver
3. Minutes of Trial
4. All Minutes and Orders of Court subsequent to trial
5. Verdict (record); Verdict (filed)
6. Motion of defendants, Landfield and Oliver for a New Trial
7. Petition for a Writ of Error
8. Assignment of Errors
9. Order allowing Writ of Error
10. Supersedeas bonds of defendants, Landfield and Oliver
11. Writ of Error
12. Bill of Exceptions
13. Instructions offered by defendants and rulings thereupon
14. Supersedeas Order
15. Citation to Writ of Error
16. Acceptance of Service of Citation
17. Endorsements on all Papers
18. Copy of this second amended Praeipce.

Please cancel certified Transcript of documents, matters or copies thereof, requested to be issued in the Praeipce and Amended Praeipce, heretofore filed herein.

Dated March 26th, 1925.

Warren L. Williams

Seymour S Silvertan

Attorneys for Defendants, Landfield and Oliver.



[ENDORSED]: ORIGINAL #6793 B IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION THE UNITED STATES OF AMERICA, Plaintiff, vs. HERMAN LANDFIELD, J. W. OLIVER, JOHN DOE ELLIS, Defendants. SECOND AMENDED PRAECIPE FILED MAR 26 1925. CHAS. N. WILLIAMS, Clerk G. F. Gibson Deputy WARREN L. WILLIAMS S. S. SILVERTON 419 Ferguson Bldg. 307 So. Hill Street LOS ANGELES, CAL. Bdwy. 7881 Bdwy. 7880 Attorneys for Defendants, Landfield and Oliver.

IN THE DISTRICT COURT OF THE UNITED  
STATES, SOUTHERN DISTRICT OF  
CALIFORNIA, SOUTHERN  
DIVISION.

THE UNITED STATES )  
OF AMERICA, )

Plaintiff, )

vs. )

CLERK'S  
CERTIFICATE.

HERMAN LANDFIELD, )

J. W. OLIVER, JOHN )

DOE ELLIS, )

Defendants. )

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 155 pages, numbered from 1 to 155, inclusive, to be the Transcript of Record on Writ of Error in the above entitled cause, as printed by the plaintiff-in-error, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation, acceptance of service on citation, writ of error, information, arraignment and plea of defendants, minutes of the trial and all minutes and orders of court subsequent to trial, verdict (record), and verdict (filed), instructions offered by defendants and rulings thereupon, motion for new trial, bill of exceptions, assignment of errors, petition for writ of error, order allowing writ of error, supersedeas bonds and supersedeas order.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Writ of Error amount to and that said amount has been paid me by the plaintiff-in-error herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this            day of April, in the year of our Lord One Thousand Nine Hundred and Twenty-five, and of our Independence the One Hundred and Forty-ninth.

CHAS. N. WILLIAMS,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By

Deputy.

